
# General Government Policy Council

## Wednesday, February 17, 2010
## Morris Hall
## 1:00 PM – 2:30 PM

Larry Cretul
Speaker

Baxter Troutman
Chairman

# Council Meeting Notice

## HOUSE OF REPRESENTATIVES

### General Government Policy Council

**Start Date and Time:** Wednesday, February 17, 2010 01:00 pm

**End Date and Time:** Wednesday, February 17, 2010 02:30 pm

**Location:** Morris Hall (17 HOB)
**Duration:** 1.50 hrs

**Consideration of the following bill(s):**

HM 553 Fishery Conservation and Management by Coley, Workman
HM 563 Energy Security by McKeel
HB 949 Florida Hurricane Catastrophe Fund by Patterson
HB 7003 Regulation of Electronic Communications by Energy & Utilities Policy Committee, Precourt
HB 7007 Pollutant Discharge Prevention and Removal by Agriculture & Natural Resources Policy Committee, Williams, T.
HB 7009 Aquaculture by Agriculture & Natural Resources Policy Committee, Williams, T.
HB 7011 South Florida Tropical Fruit Plan by Agriculture & Natural Resources Policy Committee, Williams, T.
HB 7013 Interagency Agreements for the Management of State Water Resources by Agriculture & Natural Resources Policy Committee, Williams, T.
HB 7015 Water Protection and Sustainability Program by Agriculture & Natural Resources Policy Committee, Williams, T.
HB 7023 Repeal of Obsolete Insurance Provisions by Insurance, Business & Financial Affairs Policy Committee, Patterson
HB 7025 Residential Property Structural Soundness Evaluation Grant Progam by Insurance, Business & Financial Affairs Policy Committee, Patterson
HB 7027 Prohibited Activities of Citizens Property Insurance Corporation by Insurance, Business & Financial Affairs Policy Committee, Patterson

**NOTICE FINALIZED on 02/10/2010 16:25 by TUCK.SHIRLEY**

HM 553

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HM 553 Fishery Conservation and Management
**SPONSOR(S):** Workman and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SM 1168

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| 1) | General Government Policy Council | | Deslatte | Hamby |
| 2) | Rules & Calendar Council | | | |
| 3) | Policy Council | | | |
| 4) | | | | |
| 5) | | | | |

## SUMMARY ANALYSIS

HM 553 urges Congress to consider all available mechanisms to lessen the sudden impact of the changes made to the Magnuson-Stevens Fishery Conservation and Management Act of 2007 and seek to balance resource protection and economic prosperity in Florida.

This memorial does not have a fiscal impact on state or local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Current Situation**

In 1976, the U.S. Congress passed the Fishery Conservation and Management Act, known as the Magnuson Act of 1976 (later renamed the Magnuson-Stevens Act (MSA)) (Act) due to growing concerns regarding the potential economic losses from foreign fleet catches. The statute was intended to end foreign overfishing, establish a U.S. Exclusive Economic Zone (EEZ), and industrialize the U.S. fishing fleet. Conservation efforts were mentioned in the initial section of the Act, but the primary aim was to extend U.S. territorial waters from 12 to 200 miles and to mandate a phase-out of foreign fishing within the EEZ[1].

To render the management process more efficient, the MSA established grant programs and other subsidies to help modernize and industrialize the U.S. commercial fishing fleet. The MSA also created eight Regional Fishery Management Councils composed of state fisheries managers, the regional National Marine Fisheries Service (NMFS)[2] fisheries administrator, and qualified fishing industry, academic, and environmental representatives. The State of Florida is represented on two regional councils: the Gulf of Mexico Fishery Management Council (includes the Gulf coast of Florida, Alabama, Mississippi, Louisiana, and Texas) and the South Atlantic Fishery Management Council (includes Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and the Atlantic coast of Florida). The Governor directly appoints one member to both councils who is determined to be the principal state official with fishery management responsibility. The Governor also submits a list of names to the Secretary of Commerce for discretionary appointment by the Secretary to the councils[3].

The Act was amended in 1996 adding new regulations intended to stop overfishing, help rebuild fish populations, minimize the incidental capture and killing of non-commercial marine life, and protect areas of the ocean vital to the development of juvenile fish. These amendments were meant to ensure that U.S. fisheries remained healthy and productive for future generations.

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[1] General Government Policy Council interim project, 2009

[2] The NMFS is a federal agency (under the National Oceanic and Atmospheric Administration (NOAA)) responsible for the stewardship of the nation's living marine resources and their habitat. NOAA falls under the Department of Commerce.

[3] Florida Fish & Wildlife Conservation Commission 2010 analysis

The Act was reauthorized in 2007 and included a significant additional requirement to implement annual catch limits and accountability measures for all federally managed species (Section 303(a)(15)). The reauthorized Act set a deadline of 2011 for implementing these measures. For those species that were classified as undergoing overfishing, the Act specified a deadline of 2010 for implementing annual catch limits and accountability measures. Specifically, Section 304(3) of the reauthorized Act addresses the rebuilding of overfished stocks including a requirement that overfishing is ended within two years of notification that a fishery is overfished, and that the rebuilding plan not exceed 10 years. Overfishing is defined as harvesting at a rate equal to or greater than that which will meet the management goal. A stock or stock complex is considered undergoing overfishing when the rate of fishing mortality exceeds a specific threshold. A rebuilding plan can exceed 10 years however, if the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the U.S. participates dictates otherwise.[4]

The South Atlantic Fishery Management Council (Council) has initiated steps to meet these deadlines. The Council has implemented a shallow-water grouper closure from January 1 through April 30 of this year. The closure prohibits recreational and commercial harvest of shallow-water grouper species in order to end overfishing of gag, black and red grouper. The Council has also implemented a November 1, 2009 through April 30, 2010 closure on the recreational harvest of vermilion snapper, reducing the annual commercial quota by about 50% according to the FWCC analysis. The Council and the NOAA Fisheries Service are also in the process of developing regulatory changes to end the overfishing of the Atlantic red snapper and rebuild the stock. NOAA Fisheries has already implemented a temporary action that closed all harvest of red snapper in federal waters of the South Atlantic region. The Council is now developing recommendations for permanent changes that would continue to prohibit all red snapper fishing. The Council is also considering a large-area closure to fishing for any species of snapper or grouper because so many red snapper are caught incidentally when other reef fish are being caught, and die when re-released back into the water. Another recommendation the Council has proposed is prohibiting the harvest and possession of several species of deepwater snapper and grouper in federal waters deeper than 240 feet. This action would end overfishing of Warsaw grouper and speckled hind, and would also give protection to the snowy grouper and golden tilefish, which are also overfished.

The Gulf of Mexico has seen changes in regulations for red snapper over the last few years too. In 2008, these regulations reduced the recreational bag limit and substantially reduced the recreational harvest season. For recreational fishers, the bag limit is two red snappers per person per day. However, possession of bag limits by captains and crew of for-hire vessels is prohibited.

Currently, the open recreational harvest season for red snapper in state and federal waters of the Gulf of Mexico is June 1 through August 14. The NMFS estimated that recreational fishers in the Gulf exceeded 2008's annual red snapper catch limit by approximately 1.2 million pounds, and federal law requires that harvest levels must be reduced in the year following a previous year's overharvest. To offset last year's overharvest, the NMFS shortened the recreational red snapper harvest season in Gulf federal waters (beyond 9 nautical miles from shore) from June 1 through September 30 to June 1 through August 14. The FWCC approved the same season change in state waters at its Commission Meeting on June 18, 2009.

According to FWCC, for the red snapper commercial fishery, an Individual Fishing Quota (IFQ) system was implemented in 2007 and operated under a lower overall quota in 2008. The commercial minimum size limit of harvested and imported fish is 13 inches total length. The commercial daily bag and trip limit is 2 fish per person in state waters. The commercial quota is set at 2.55 million pounds. Seasonal and area closures are in place for the commercial shrimping industry to reduce effort in order in minimize juvenile red snapper bycatch.

[4] *Id*

**Effect of Proposed Changes**

HM 553 urges Congress to consider all available mechanisms to lessen the sudden impact of the changes made to the Magnuson-Stevens Fishery Conservation and Management Act of 2007 and seek to balance resource protection and economic prosperity in Florida.

B. SECTION DIRECTORY:

None

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

**On lines 18-20,** the memorial states that every federally managed fishery is required to implement annual catch limits and accountability measures by 2011, except with respect to Florida. Florida is not the only state that has to meet catch limits by 2010. Any other coastal state that allows for fishing of federally overfished stock would also have to meet the 2010 deadline.

**On lines 21-25,** the memorial states that Florida is required to implement annual catch limits by 2010. The NMFS is required to implement catch limits, not the state of Florida.

**FWCC provided the following comments:**

If the Memorial is acted upon by Congress, the called-for changes have the potential to reduce short-term and perhaps long-term negative economic impacts to recreational and commercial fisheries by ameliorating the hard deadlines established in the 2007 reauthorization of the Act. The following description of the fishery provides an overview of the historical participation in these fisheries and applies to all states in the South Atlantic Fishery Management Council (North Carolina, South Carolina, Georgia, and Florida). It is taken from South Atlantic Fishery Management Council documents (Draft Amendment 17A to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region and draft Environmental Impact Statement. November 2009. South Atlantic Fishery Management Council. Charleston, SC.)

"From 2003-2007, which is the period of data used in the analysis of the expected impacts of this action, an average of 944 vessels per year were permitted to operate in the commercial snapper grouper fishery. Of these vessels, 749 held transferable permits and 195 held non-transferable permits. On average, 890 vessels landed 6.43 million pounds of snapper grouper and 1.95 million pounds of other species on snapper grouper trips. Total dockside revenues from snapper grouper species stood at $13.81 million (2007 dollars) and from other species, at $2.30 million (2007 dollars). Considering revenues from both snapper grouper and other species, the revenues per vessel would be $18,101. An average of 27 vessels per year harvested more than 50,000 pounds of snapper grouper species per year, generating at least, at an average price of $2.15 (2007 dollars) per pound, dockside revenues of $107,500. Vessels that operate in the snapper grouper fishery may also operate in other fisheries, the revenues of which cannot be determined with available data and are not reflected in these totals. Although a vessel that possesses a commercial snapper grouper permit can harvest any snapper-grouper species, not all permitted vessels or vessels that landed snapper grouper landed all of the six major species in this amendment. The following average number of vessels landed the subject species in 2003-2007: 292 for gag, 253 for vermilion snapper, 220 for red snapper, 237 for black sea bass, 323 for black grouper, and 402 for red grouper. Combining revenues from snapper grouper and other species on the same trip, the average revenue (2007 dollars) per vessel for vessels landing the subject species would be $20,551 for gag, $28,454 for vermilion snapper, $22,168 for red snapper, $19,034 for black sea bass, $7,186 for black grouper, and $17,164 for red grouper."

"For the period 2003-2007, an average of 1,635 vessels were permitted to operate in the snapper grouper for-hire fishery, of which 82 are estimated to have operated as headboats. Within the total number of vessels, 227 also possessed a commercial snapper grouper permit and would be included in the summary information provided on the commercial sector. The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The charterboat annual average gross revenue is estimated to range from approximately $62,000-$84,000 for Florida vessels, $73,000-$89,000 for North Carolina vessels, $68,000-$83,000 for Georgia vessels, and $32,000-$39,000 for South Carolina vessels. For headboats, the appropriate estimates are $170,000-$362,000 for Florida vessels, and $149,000-$317,000 for vessels in the other states."

The sudden reductions in allowable harvest being implemented for a wide range of species will reduce business income. Public testimony to date received by the Councils and NOAA Fisheries Service indicate that recreational charter businesses have been or expect to see

reductions in business ranging from 25 to 60% because of the growing number of regulatory restrictions being implemented. Some fishing business owners have stated publicly that they will not be able to stay in business at all.

The short-term negative impacts to fishing and fishing industries could be severe. However there are long term negative fiscal impacts associated with delaying or prolonging the rebuilding and recovery of targeted fisheries. As an example, the current projections for rebuilding the South Atlantic red snapper fishery indicate a doubling of the available harvest (landings) by 2020. This result is expected because fishing pressure will be reduced by about 80% immediately. As the fish population (stock) rebuilds it is expected that commercial and recreational fishermen will benefit from increased harvest allowances and higher average annual yields than are available now.

Fiscal estimates of the effects of the Act depend upon the management alternatives used, and the severity of those alternatives. For example, an extended closed season for an economically important species like red snapper would affect the for-hire sector (charter boats and head boats) who have a direct business connection to the availability of that species. Other economic factors, e.g. fuel sales, fishing tackle sales, would also be affected by restrictive management measures associated with rebuilding plans. Likewise, fishing closures have an effect on the availability of species that are commercially sold in the marketplace, and this could lead to that species being replaced in the market by imports or other species not under management.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

House Memorial

A memorial to the Congress of the United States, urging Congress to consider all available mechanisms to lessen the sudden impact of the changes made to the Magnuson-Stevens Fishery Conservation and Management Act of 2007 and seek to balance resource protection and economic prosperity in Florida.

WHEREAS, the Magnuson-Stevens Fishery Conservation and Management Act of 2007 emphasized preventing overfishing and rebuilding overfished stocks, and

WHEREAS, recent revisions to the act were prompted in part by criticism of progress toward ending overfishing and rebuilding fish stocks, and

WHEREAS, such revisions impose significant restrictions on commercial and recreational fishing in federal waters and prohibitively short deadlines to end overfishing, and

WHEREAS, every federally managed fishery is required to implement annual catch limits and accountability measures by 2011, except with respect to Florida, and

WHEREAS, Florida is required to implement annual catch limits by 2010 that are low enough to end, and then prevent, overfishing for federally managed species that are subject to overfishing, as determined by the United States Secretary of Commerce, and

WHEREAS, such requirements include accountability measures which stipulate that if catch limits are exceeded for such federally managed species, federal actions must be stipulated to

compensate for the harvest overage, and

WHEREAS, the consequence of such accountability measures is that certain types of fishing activity, such as recreational fishing, could be faced with ever-increasing limits imposed over a minimal timeframe, and

WHEREAS, in the federal waters of the South Atlantic, there are 10 species of economically important reef fish that are subject to the new deadline, and

WHEREAS, a number of similar actions to restrict harvest of reef fish in the Gulf of Mexico have been instituted, and

WHEREAS, federal managers are considering a complete closure of all fishing for the Atlantic red snapper fishery, and

WHEREAS, severely restricting or eliminating harvest for 10 of the state's most valuable reef fish species simultaneously will have the unfortunate impact of putting people out of business, and

WHEREAS, the act requires federal managers to use the best scientific information available to end overfishing and provide future sustainable harvest, and

WHEREAS, even though fishery scientists are using the best scientific information available, there continues to be inadequate funding to conduct the level of fisheries monitoring and research work necessary to meet the standards of the act, and

WHEREAS, to meet such standards, it is imperative to provide federal fishery managers with the financial means necessary to gather and analyze more complete and continuous information on the status of fish stocks, and

WHEREAS, consistent with these conservation requirements, recent changes to the act direct that economic impacts to fishing communities be minimized and that mechanisms be provided to support the economic health of fishing communities, and

WHEREAS, every effort should be made to provide economic assistance to key fishing industries and businesses that cannot survive the restrictions being implemented by recent changes to the Magnuson-Stevens Fishery Conservation and Management Act of 2007, NOW, THEREFORE,

Be It Resolved by the Legislature of the State of Florida:

That the Congress of the United States is requested to consider all available mechanisms to lessen the sudden impact of the changes made to the Magnuson-Stevens Fishery Conservation and Management Act of 2007 and seek to balance resource protection and economic prosperity in Florida.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

Strike-All Amendment No. 1

COUNCIL/COMMITTEE ACTION

| | |
|---|---|
| ADOPTED | __ (Y/N) |
| ADOPTED AS AMENDED | __ (Y/N) |
| ADOPTED W/O OBJECTION | __ (Y/N) |
| FAILED TO ADOPT | __ (Y/N) |
| WITHDRAWN | __ (Y/N) |
| OTHER | _____ |

Council/Committee hearing bill: General Government Policy Council

Representative(s) Coley offered the following:

**Strike-All Amendment (with title amendment)**

Remove everything after the resolving clause and insert:

WHEREAS, the Magnuson-Stevens Fishery Conservation and Management Act emphasized preventing overfishing and rebuilding overfished stocks, and

WHEREAS, recent revisions to the act were prompted in part by criticism of progress toward ending overfishing and rebuilding fish stocks, and

WHEREAS, such revisions impose significant restrictions on commercial and recreational fishing in federal waters and prohibitively short deadlines to end overfishing, and

Whereas, every federally managed fishery that is classified as undergoing "overfishing" is required to have annual catch limits and accountability measures in place by 2010, and

Whereas, all other federally managed species are required to have annual catch limits and accountability measures in place by 2011, and

WHEREAS, such requirements include accountability measures which stipulate that if annual catch limits are exceeded for such federally managed species, federal actions must be stipulated to compensate for the harvest overage, and

WHEREAS, the consequence of such accountability measures is that certain types of fishing activity, such as recreational fishing, could be faced with ever-increasing limits imposed over a minimal timeframe, and

WHEREAS, in the federal waters of the South Atlantic, there are 10 species of economically important reef fish that are subject to the new deadline, and

WHEREAS, a number of similar actions to restrict harvest of reef fish in the Gulf of Mexico have been instituted, and

WHEREAS, federal managers are considering a complete closure of all fishing for the Atlantic red snapper fishery, and

WHEREAS, severely restricting or eliminating harvest for 10 of the state's most valuable reef fish species simultaneously will have the unfortunate impact of putting people out of business, and

WHEREAS, the act requires federal managers to use the best scientific information available to end overfishing and provide future sustainable harvest, and

WHEREAS, even though fishery scientists are using the best scientific information available, there continues to be inadequate funding to conduct the level of fisheries monitoring

and research work necessary to meet the standards of the act, and

WHEREAS, to meet such standards, it is imperative to provide federal fishery managers with the financial means necessary to gather and analyze more complete and continuous information on the status of fish stocks, and

WHEREAS, consistent with these conservation requirements, recent changes to the act direct that economic impacts to fishing communities be minimized and that mechanisms be provided to support the economic health of fishing communities, and

WHEREAS, every effort should be made to provide economic assistance to key fishing industries and businesses that cannot survive the restrictions being implemented by recent changes to the Magnuson-Stevens Fishery Conservation and Management Act, NOW, THEREFORE,

Be It Resolved by the Legislature of the State of Florida:

That the Congress of the United States is requested to consider all available mechanisms to lessen the sudden impact of the changes made to the Magnuson-Stevens Fishery Conservation and Management Act and seek to balance resource protection and economic prosperity in Florida.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

Strike-All Amendment No. 1

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**T I T L E  A M E N D M E N T**

Remove line 5 and insert:

Stevens Fishery Conservation and Management Act

HM 563

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HM 563 Energy Security
**SPONSOR(S):** McKeel
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1726

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| 1) | General Government Policy Council | | Blalock | Hamby |
| 2) | Rules & Calendar Council | | | |
| 3) | Policy Council | | | |
| 4) | | | | |
| 5) | | | | |

## SUMMARY ANALYSIS

On December 20, 2006, the Gulf of Mexico Energy Security Act of 2006 (GOMESA) was signed into law by President George W. Bush. This law prohibits leasing of federal submerged lands for the purpose of producing oil and natural gas in the Gulf of Mexico within 125 miles of the Florida coastline in the Eastern Planning Area and 100 miles from the Florida coastline in the Lease Area 181 of the Central Planning Area. This prohibition is set to expire on June 30, 2022, but it may be changed by federal legislation at any time. GOMESA also includes a revenue sharing provision which allows "producing states" to share 37.5 percent of revenues from Gulf of Mexico leases. The term "producing states" only includes Texas, Louisiana, Mississippi, and Alabama.

This memorial urges Congress to support the expiration and removal of the moratorium prohibiting exploration and production of domestic supplies of oil and natural gas in federal waters surrounding Florida, and to include Florida in revenue sharing resulting from the production of oil and natural gas in federal waters surrounding Florida.

This memorial does not appear to have a fiscal impact on state or local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

The Submerged Lands Act of 1953 was enacted in response to litigation that effectively transferred ownership of the first 3 miles of a state's coastal submerged lands to the federal government. In the case *United States v. California,* 332 U.S. 19 (1947), the United States successfully argued that the three nautical miles seaward of California belonged to the federal government, primarily finding that the federal government's responsibility for the defense of the marginal seas and the conduction of foreign relations outweighed the interests of the individual states. In response, Congress adopted the Submerged Lands Act in 1953, granting title to the natural resources located within three miles of their coastline. The Act also provided a procedure for a state to claim a greater boundary based on prior legal claims. Following a series of court cases, the three nautical miles were enlarged to three marine leagues, or 10.35 statute miles, for Texas' and Florida's Gulf coast. Title II of the Act addresses the rights and claims by the States to the lands and resources beneath navigable waters within their historic boundaries and provides that the right of development belongs to the States. Title III of the Act preserves the control of the seabed and resources beyond State boundaries to the federal government.

In 1953, Congress also enacted the Outer Continental Shelf Lands Act, which governs mineral activities in federal areas within the Outer Continental Shelf (OCS). The 1953 statute defines the OCS as all submerged lands lying seaward of State coastal waters (10.34 miles for Florida's Gulf Coast) which are under U.S. jurisdiction. The statute authorized the Secretary of Interior to promulgate regulations to lease the OCS in an effort to prevent waste and conserve natural resources and to grant leases to the highest responsible qualified bidder as determined by competitive bidding procedures.

There are four separate regions of the OCS, including:

- The Gulf of Mexico OCS Region;
- The Atlantic OCS Region;
- The Pacific OCS Region; and
- The Alaskan OCS Region.

The OCS is a significant source of oil and gas for the Nation's energy supply. The approximately 43 million leased OCS acres generally account for about 15 percent of America's domestic natural gas production and about 27 percent of America's domestic oil production. The offshore areas of the United States are estimated to contain significant quantities of resources in yet-to-be-discovered fields. The

Mineral Management Service (MMS) estimates of oil and gas resources in undiscovered fields on the OCS (2006, mean estimates) total 86 billion barrels of oil and 420 trillion cubic feet of gas. These volumes represent about 60 percent of the oil and 40 percent of the natural gas resources estimated to be contained in remaining undiscovered fields in the United States.[1]

The Gulf of Mexico OCS Region is currently divided into three separate offshore drilling areas:

- The Western Planning Area;
- The Central Planning Area; and
- The Eastern Planning Area.

The Eastern Planning Area starts on the western coastline of Florida and extends west to a line that is approximately south of Pensacola, Florida into the Gulf.[2] Estimates suggest that 21.51 trillion cubic feet of natural gas and 3.88 billion barrels of oil are in the Eastern Planning Area.[3]

Section 8(g) of the Outer Continental Shelf Lands Act (OCSLA) Amendments of 1978 provided that the States were to receive a "fair and equitable" division of revenues generated from the leasing of lands within 3 miles of the seaward boundary of a coastal State containing one or more oil and gas pools or fields underlying both the Outer Continental Shelf and lands subject to the jurisdiction of the State. The States and the Federal Government, however, could not reach agreement concerning the meaning of the term "fair and equitable." Revenues generated within the 3-mile boundary were placed into an escrow fund beginning August 1979. Revenues from the Beaufort Sea in Alaska were placed into a second escrow fund under section 7, beginning December 1979.

Congress resolved the dispute over the meaning of "fair and equitable" in the OCSLA Amendments of 1985, Public Law 99-272. The law provides for the following distribution of section 8(g) revenues to the States:

- Disbursement of escrow funds during Fiscal year (FY) 1986-87;
- A series of annual settlement payments disbursed to the States over a 15-year period from FY 1987 to FY 2001; and
- Recurring annual disbursements of 27 percent of royalty, rent, and bonus revenues received within each affected state's 8(g) zone.

The 1985 amendments to the OCSLA determined that the figure of 27 percent was appropriate to compensate States for any damage to, or drainage of, State jurisdiction natural gas and oil resources that operate on adjacent Federal leases. Between 1986 and 2003, coastal States received over $3.1 billion in Section 8(g) revenue.

**Federal Offshore Revenue Received by States Under Section 8(g) of the OCSLA, FY 1986-2003**

| | |
|---|---|
| Alabama | $ 198,963,900 |
| Alaska | 523,816,155 |
| California | 678,204,136 |
| Florida | 2,416,063 |
| Louisiana | 969,267,130 |
| Mississippi | 21,449,651 |
| Texas | 751,596,694 |
| **Total** | **$ 3,145,713,709** |

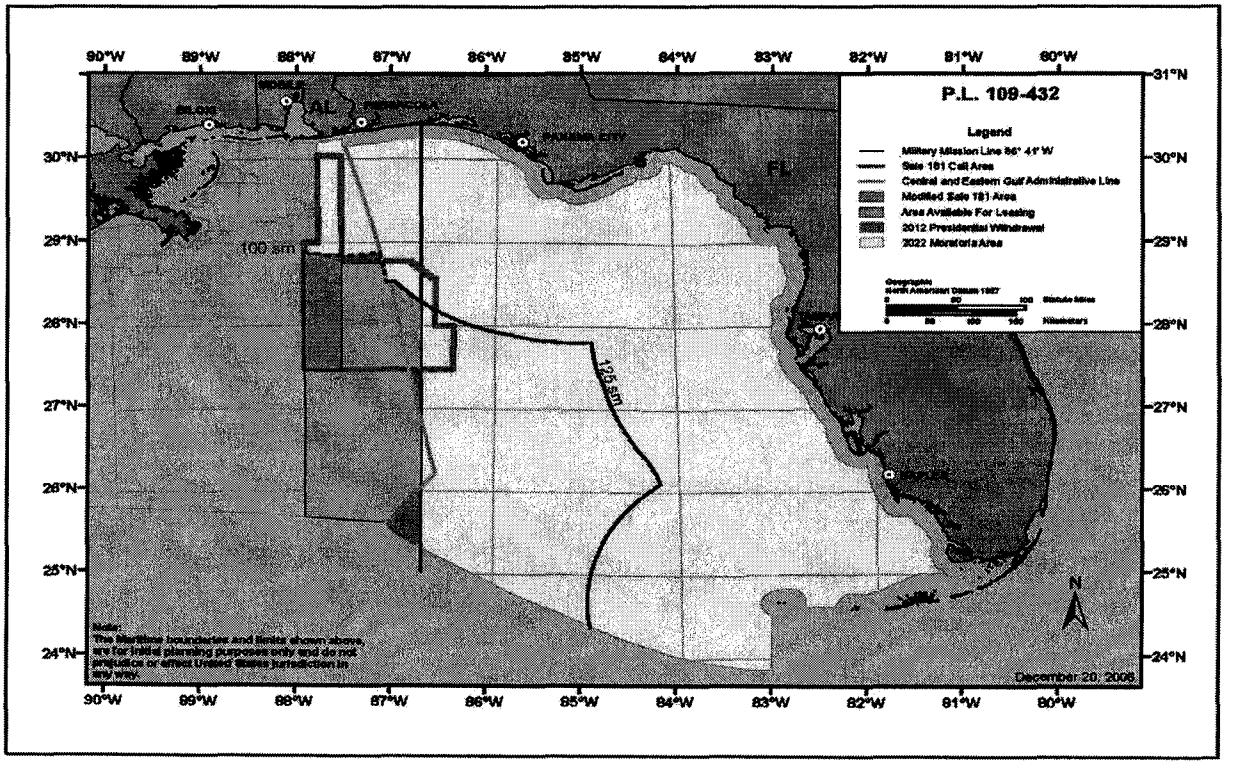
[1] http://www.mms.gov/offshore/.
[2] See Figure 1.
[3] Minerals Management Service, http://www.mms.gov/revaldiv/PDFs/NA2006BrochurePlanningAreaInsert.pdf.

In FY 2008, MMS disbursed $103.6 million in 8(g) oil and gas revenues to the following seven coastal states:

- Alabama: $15,000,000
- Alaska: $17,800,000
- California: $11,000,000
- Louisiana: $45,800,000
- Texas: $13,000,000
- Mississippi: $ 564,068
- Florida: $ 83

The Gulf of Mexico Energy Security Act of 2006 (GOMESA) was passed by the United States Congress and signed into law by President George W. Bush on December 20, 2006. This law opens up some previously off-limit areas of the Western and Central Gulf of Mexico to offshore drilling. However, it also temporarily halts leasing for oil or natural gas drilling in any Gulf of Mexico region east of the Military Mission Line (86 degrees and 41 minutes W. longitude). Furthermore, it prohibits drilling in any region of the Eastern Planning Area within 125 miles of the Florida coast or any region that is within the Central Planning Area, Lease Area 181, and also within 100 miles of the Florida coastline.[4] The jurisdiction of the United States for the Gulf of Mexico extends from 200 miles up to a possible length of 350 miles offshore.[5] This prohibition is set to expire on June 30, 2022.

**Figure 1.**




In addition, GOMESA included a revenue sharing provision for Gulf coast "producing states", which are defined in law as Texas, Louisiana, Mississippi, and Alabama. The revenue sharing provisions allocated a share of oil and natural gas revenues to Alabama, Louisiana, Mississippi and Texas for

[4] U.S. HR 6111. Also See Figure 1.
[5] U.S. Department of the Interior, Minerals Management Service, http://www.gomr.mms.gov/homepg/whoismms/whatsocs.html.

directly supporting offshore activities and onshore infrastructure. From 2007 through 2016, the four Gulf oil and gas producing states will share 37.5 percent of revenues from new leases in the 0.5 million acres in the Eastern Gulf and the 5.8 million acres in the Central Gulf. After 2016, they will share 37.5 percent of revenues from all Gulf leases issued after December 2006. GOMESA funds are to be used for:

- Coastal conservation,
- Restoration, and
- Hurricane protection.

The amount of the 37.5 percent that each state receives is calculated based on the amount of oil or gas that a specific tract produces and the distance of each producing tract from the coastline of each state. The closer a particular tract is to a state's coastline, the larger the percentage is that that state collects from the revenues produced from the tract. The Department of the Interior has developed a formula by rule that calculates the exact amount of the revenues from a particular tract that each state receives annually.

**Gulf of Mexico Energy Security Act of 2006**
**Fiscal Year 2008 Allocations**

| Producing State | % Allocation | Total Allocation | Amount Direct to States | Amount Direct to CPSs[6] |
|---|---|---|---|---|
| Alabama | 30.60% | $ 7,723,845.31 | $ 6,179,076.25 | $ 1,544,769.06 |
| Louisiana | 31.44% | $ 7,934,151.41 | $ 6,347,321.13 | $ 1,586,830.28 |
| Mississippi | 27.27% | $ 6,882,794.75 | $ 5,506,235.80 | $ 1,376,558.95 |
| Texas | 10.69% | $ 2,699,249.57 | $ 2,159,399.65 | $ 539,849.92 |
| **Total All 4 States** | **100.00%** | **$ 25,240,041.04** | **$ 20,192,032.83** | **$ 5,048,008.21** |

**Effect of Proposed Memorial**

This memorial urges the Congress of the United States to support the expiration and removal of the moratoria prohibiting exploration and production of domestic supplies of oil and natural gas in federal waters surrounding Florida and to include Florida in revenue sharing resulting from the production of oil and natural gas in federal waters surrounding Florida. The memorial further directs that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

B. SECTION DIRECTORY:

None.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[6] CPS stands for "coastal political subdivisions", i.e. local governments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

House Memorial

A memorial to the Congress of the United States, urging Congress to support the expiration and removal of moratoria prohibiting exploration and production of domestic supplies of oil and natural gas in federal waters surrounding Florida and to include Florida in revenue sharing resulting from the production of oil and natural gas in federal waters surrounding Florida.

WHEREAS, across party lines, Florida's representatives in Congress have long recognized the dependence of the state's tourist and agricultural economies on access to reliable and affordable petroleum products derived from oil and natural gas, and

WHEREAS, according to the Department of Revenue, Florida consumes approximately 26 million gallons of gasoline and diesel fuel per day and approximately 10 billion gallons of gasoline and diesel fuel annually, and

WHEREAS, the Public Service Commission expects Florida to increase total utility generation capacity derived from natural gas from 30 percent in 2005 to over 44 percent in 2014 to meet increasing electricity demand in the state, and

WHEREAS, Florida's industries, including fertilizer, agrochemical, plastic, manufacturing, bakeries, juice and food processing, pulp and paper, road construction, metals, restaurants, hotels, grocery stores, and research institutions, among many others, are heavily dependent on access to reliable and affordable natural gas, and

WHEREAS, the United States has recently experienced record high prices for gasoline, diesel fuel, and natural gas, and

WHEREAS, the Energy Information Administration reports that global demand for oil has risen from 77 million barrels per day in 2001 to 85 million barrels per day in 2007, and

WHEREAS, the Energy Information Administration predicts that global demand for energy will increase 44 percent by 2030, requiring an additional 16 million barrels of oil per day and a 46-percent increase in the production of natural gas, and

WHEREAS, according to the Energy Information Administration, the United States produces just 43 percent of the oil its citizens and residents consume and consumes 25 percent of the oil produced globally, and

WHEREAS, the United States Department of the Interior conservatively estimates that around 116 billion barrels of oil, enough to power 65 million cars for 60 years, and around 651 trillion cubic feet of natural gas, enough to power 60 million homes for 160 years, is recoverable from domestic sources, and

WHEREAS, the United States Department of the Interior conservatively estimates that around 233 trillion cubic feet of natural gas is recoverable from federal waters in the Gulf of Mexico, and

WHEREAS, development and production plans filed with the United States Department of the Interior in 1997 confirm potential resources for the daily production of up to 450 million cubic feet of natural gas in a small portion of the Eastern Gulf of Mexico off the Florida Panhandle known as Destin Dome, and

WHEREAS, technological advances and environmental partnerships have enabled the energy industry to achieve new levels of safety and ecological protection while producing oil and natural gas in federal waters, and

WHEREAS, domestically, the Outer Continental Shelf produces 1 million barrels of oil per day, and, according to the National Academy of Sciences, since 1980 less than 0.001 percent has slipped into the sea, which is less than the amount of naturally occurring oceanic seepage, and

WHEREAS, Hurricanes Katrina and Rita, which in 2005 battered the Gulf of Mexico and nearly 3,000 oil platforms directly in their paths with major hurricane force winds and 100-foot seas, caused no loss of life among offshore energy industry personnel or significant spills from offshore oil wells on the Outer Continental Shelf, according to the United States Department of the Interior, and

WHEREAS, in 2008, Hurricanes Ike and Gustav followed very similar paths to Hurricanes Katrina and Rita and caused far less damage, attesting to the progress made by the industry in implementing enhanced oil platform and infrastructure standards, and

WHEREAS, Florida continues to have a successful history of oil and natural gas production in environmentally sensitive areas such as the Everglades dating back to 1943, and

WHEREAS, according to the Department of Environmental Protection, Florida oil and natural gas fields have produced more than 548 million barrels of oil and more than 630 million cubic feet of natural gas since 1943, and

WHEREAS, in exchange for a 125-mile drilling buffer in the Gulf of Mexico, Florida declined to participate in the 2006 Gulf of Mexico Energy Security Act that provides 37.5 percent of all federal oil and natural gas revenues, including lease sales and production royalties, to Gulf Coast states, and

WHEREAS, the initial Eastern Gulf of Mexico Sale 224 in the 2006 Gulf of Mexico Energy Security Act generated in excess of $64 million, 37.5 percent of which went directly to Texas, Louisiana, Mississippi, and Alabama, and

WHEREAS, revenue sharing prescribed in the 2006 Gulf of Mexico Energy Security Act will extend to all new production in the Gulf of Mexico in 2017, and, as a result, Louisiana estimates it will generate more than $650 million per year, and

WHEREAS, without a change in policy, Florida will continue to be excluded from sharing additional revenues and royalties related to lease sales and production royalties associated with the development of oil and natural gas resources in the Gulf of Mexico, NOW, THEREFORE,

Be It Resolved by the Legislature of the State of Florida:

That the Congress of the United States is urged to support the expiration and removal of moratoria prohibiting exploration and production of domestic supplies of oil and natural gas in federal waters surrounding Florida and to include Florida in revenue sharing resulting from the production of oil and natural gas in federal waters surrounding Florida.

BE IT FURTHER RESOLVED that copies of this memorial be

dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 949 Florida Hurricane Catastrophe Fund
**SPONSOR(S):** Patterson
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1460

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| 1) | General Government Policy Council | | Callaway | Hamby |
| 2) | Full Appropriations Council on Education & Economic Development | | | |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |

## SUMMARY ANALYSIS

The Florida Hurricane Catastrophe Fund (Fund) is a tax-exempt trust fund created as a form of reinsurance for residential property insurers. The Fund reimburses (reinsures) insurers for a portion of their hurricane losses to residential property.

The Fund generally operates on a contract year. Historically, the Fund's contract year has run from June 1st to May 31st of the next calendar year. However, 2009 legislation changed the Fund's contract year to a calendar year starting January 1, 2011. In order to provide for a transition from a contract year ending on May 31st to one ending on December 31st, the legislation created a seven month transitional contract year from June 1, 2010 to December 31, 2010. The transitional contract year has created unintended consequences for insurers due to the way in which the cost of reinsurance is amortized (allocated as a cost) on insurers' financial statements. In 2010, an insurer's financial statement will show a larger expense associated with Fund reinsurance than historically shown because of the transitional contract year in 2010. The statement will show an expense equal to five months of Fund reinsurance costs from January 1, 2010 to May 31, 2010. And, the statements will also show an expense equal to 12 months of Fund reinsurance costs over the seven month period from June 1, 2010 to December 31, 2010. This reduces a company's pre-tax income and surplus more than what it is historically reduced each year for the purchase of Fund reinsurance. The reduction in income and surplus could impact the financial solvency of some insurance companies and may negatively impact an insurer's rating from the rating agencies. To remedy the negative financial impact of the transitional contract year, starting June 1, 2010, the bill returns the Fund's contract year to June 1st – May 31st.

The bill also provides legislative intent and findings relating to Fund coverage in order to facilitate insurers' purchase of private reinsurance and provides earlier time frames for the State Board of Administration and insurers to effectuate Fund coverage each year.

The bill changes the way in which the Fund's capacity for mandatory coverage is calculated each year. Instead of allowing the Fund's capacity to increase each year as the Fund's exposure increases (but limited by the increase in the Fund's cash balance), the bill sets the Fund's capacity at $17 billion for each contract year and does not allow the capacity to increase until the Fund's cash and bonding ability exceeds $34 billion.

The bill does not change the way the Fund's retention is calculated but requires the use of earlier exposure data in its calculation.

The bill does not have a fiscal impact on state or local governments. The bill should resolve the financial issues for insurers relating to the amortization of Fund reinsurance. Changes related to the Fund's capacity may reduce the likelihood or amount of assessments levied by the Fund on most property and casualty policyholders. Effectuating Fund coverage earlier in the year may result in lower private reinsurance costs for insurers. Lower private reinsurance costs may reduce property insurance rates for policyholders.

The bill is effective upon becoming a law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background on the Florida Hurricane Catastrophe Fund**

The Florida Hurricane Catastrophe Fund (FHCF or Fund) is a tax-exempt trust fund created after Hurricane Andrew as a form of reinsurance for residential property insurers.[1] The Fund reimburses (reinsures) insurers for a portion of their hurricane losses to residential property. For all residential property insurers, the FHCF must offer three options for reinsurance coverage. One of the three options is mandatory and thus must be purchased by all residential property insurers on their residential property exposure. One optional coverage, the Temporary Emergency Additional Coverage Options (TEACO), offers reinsurance for insurers below the mandatory coverage. The other, Temporary Increase In Coverage Limit Options (TICL) offers reinsurance for insurers above the mandatory coverage. In addition to these three coverage options, the Fund must offer specified insurers $10 million of additional reinsurance coverage.

The FHCF is administered by the State Board of Administration (SBA). Participating insurers choose a percentage level of reimbursement by the FHCF. By statute, insurers can select 45, 75, or 90 percent coverage reimbursement for losses that exceed its deductible/retention for each hurricane.[2] Most insurers choose the 90 percent reimbursement percentage.[3] This means once an insurer triggers FHCF coverage, 90 percent of its losses will be reimbursed by the FHCF, up to the insurer's limit of coverage. Insurers may purchase additional reinsurance in the private market to reimburse them for their hurricane losses in amounts not covered by the FHCF. Reinsurance in the private market can also be purchased for the coinsurance amount (e.g., 10 percent) that is the insurer's responsibility for the coverage provided by the FHCF.

Because the FHCF provides insurers an additional source of reinsurance to what is available in the private market, insurers are generally able to write more residential property insurance in the state than could otherwise be written. Because most reinsurance purchased through the FHCF is significantly less expensive than private reinsurance, the FHCF also acts to lower residential property insurance premiums for consumers.

**Changes Relating to the Fund's Contract Year**

The FHCF generally operates on a contract year. The contract year dictates when Fund coverage is effective. Historically, the Fund's contract year has run from June 1st to May 31st of the next calendar

[1] s. 215.555, F.S.
[2] s. 215.555(2)(e)2., F.S.
[3] http://fhcf.paragonbenfield.com/pdf/08fin_pre.pdf. (last viewed January 15, 2009).

year. However, in the 2009 Legislative Session, CS/CS/CS/HB 1495[4] was enacted that changed the Fund's contract year to a calendar year starting January 1, 2011. Thus, beginning on January 1, 2011, the Fund's contract year is January 1st to December 31st rather than June 1st to May 31st. In order to provide for a transition from a contract year ending on May 31st to one ending on December 31st, the 2009 legislation created a seven month transitional contract year to run from June 1, 2010 to December 31, 2010.

The creation of the transitional contract year from June 1, 2010 to December 31, 2010 has created unintended consequences for insurance companies. FHCF coverage purchased by insurance companies is accounted for as reinsurance in the company's statutory basis financial statements. Accounting principles[5] allow a company's cost for reinsurance to be earned over the reinsurance contract period in proportion to the amount of reinsurance purchased. Thus, in many cases, insurers' financial statements divide and expense Fund reinsurance on a pro rata basis over the Fund's contract period. This expense directly reduces the insurer's pre-tax income and surplus. In other words, the cost of reinsurance from the FHCF is amortized (allocated as a cost) on the insurance company's financial statement in equal amounts each month of the Fund contract year. Under current law, in 2010, a company will amortize five months of Fund coverage from January 1, 2010 to May 31, 2010 which is the remainder of the 2009-2010 contract year. The company will also amortize all of the transitional contract year's Fund coverage from June 1, 2010 to December 31, 2010.

In 2010, an insurance company's financial statement will show a larger expense associated with Fund reinsurance than historically shown because of the transitional contract year in 2010. The statement will show an expense equal to five months of Fund reinsurance costs from January 1, 2010 to May 31, 2010 for the 2009 - 2010 contract year (consistent with how the Fund reinsurance costs have historically been expensed). And, the statements will also show an expense equal to 12 months of Fund reinsurance costs over the seven month period from June 1, 2010 to December 31, 2010 for the transitional contract year. Thus, the transitional contract year results in insurance companies amortizing the equivalent of 17 months of FHCF coverage over 12 months rather than over 12 months as the companies have historically done. This results in an additional expense equal to the cost of five months of Fund reinsurance on the company's financial statement. This additional expense reduces a company's pre-tax income and surplus more than what it is historically reduced each year for the purchase of Fund reinsurance. The additional income and surplus reduction amount is equal to the cost of five months of Fund reinsurance. This reduction in income and surplus will be millions of dollars for insurers and could impact the financial solvency of some insurance companies.[6] An insurer's rating from the rating agencies could also negatively be impacted.

Starting June 1, 2010, the bill returns the Fund's contract year to June 1st – May 31st. This prevents the additional income and surplus decrease for insurers in 2010 and the resulting solvency problem because insurance companies will be amortizing 12 months of Fund reinsurance over 12 months in 2010 and thereafter. This is consistent with how insurers have historically expensed FHCF coverage on their financial statements.

**Changes Facilitating Insurers' Purchase of Private Reinsurance**

The bill also provides legislative intent and findings relating to Fund coverage in order to facilitate insurers' purchase of private reinsurance. The findings detail the importance of insurers being informed about the specifics of Fund coverage each year as early in the calendar year as possible. To that end, the bill requires the State Board of Administration to publish information that allows insurers to ascertain how much the reinsurance coverage the Fund is going to sell to insurers by January 1st of the year preceding the contract year (i.e. January 1st of each calendar year). Furthermore, the SBA is required to adopt the Fund's reimbursement contract by February 1st of the year preceding the contract year (i.e. February 1st of each calendar year) and insurers are required to execute the Fund's reimbursement contract by March 1st of the year preceding the contract year (i.e. March 1st of each calendar year). This allows insurers to determine the amount of private reinsurance they need so the insurers can purchase

[4] Section 1, Ch. 2009-87, L.O.F.

[5] Statement of Statutory Accounting Principles No. 62, Property and Casualty Reinsurance (SSAP 62).

[6] With limited exceptions, property and casualty insurance companies are required by s. 624.408(1)(a)5. , F.S., to maintain $4 million in surplus at all times in order to keep their certificate of authority.

the needed private reinsurance early in the calendar year. Purchasing private reinsurance early in the calendar year should allow insurers to more competitively negotiate private reinsurance which may in turn reduce the cost of private reinsurance.

**Changes Relating to the Fund's Capacity**

The FHCF has a maximum amount it will reimburse insurers each year set by statute.[7] This is called the Fund's capacity. Under current law, the maximum amount the FHCF must pay (the capacity) in any one year for the mandatory coverage is $15 billion, adjusted annually based on the percentage growth in Fund exposure, but not to exceed the dollar growth in the cash balance of the Fund.[8] In recent years the Fund's capacity has grown annually due to the growth in exposure for the Fund. For the 2009-2010 contract year, the Fund's capacity for mandatory coverage is $17.175 billion, meaning the most the Fund has to reimburse insurers for property insurance claims paid by insurers is $17.175 billion for the Fund's mandatory coverage.[9]

The bill changes the way in which the Fund's capacity for mandatory coverage is calculated each year. The bill sets the Fund's capacity at $17 billion for each contract year and does not allow the capacity to increase until the Fund's cash and bonding ability exceeds $34 billion.[10] Thus, the Fund's capacity will no longer increase each year if the Fund's exposure increases. The change in the Fund's capacity calculation provided in the bill allows the FHCF to accumulate funds to pay the maximum mandatory coverage Fund obligations ($17 billion a year) for claims resulting from hurricanes in back-to-back seasons.[11] Once this happens, the Fund's capacity will increase. This change reverts the Fund's capacity calculation to how it was from 1999 – 2004. The change will allow the Fund's cash balance to grow in years where there are no hurricanes while keeping the Fund's exposure (capacity) frozen. Accordingly, the Fund will be less reliant on bonding to meet its mandatory coverage obligations.

**Changes Relating to the Fund's Retention**

Insurers buying reinsurance from the Fund must meet a deductible before the Fund will reimburse the insurer for property claims the insurer has paid. This is called the Fund's retention. Under current law, the total industry retention (aggregate retention) for the mandatory coverage is $4.5 billion per hurricane, adjusted annually based on the FHCF's exposure reported by insurers for the prior year.[12]

The bill requires the Fund's retention to be based on insurers' exposure two years prior to the current contract year, rather than one year prior as under current law.[13] For example, for the contract year beginning on June 1, 2010, the Fund's retention would be calculated on insurers' exposure reported in 2008, rather than in 2009 as under current law. The way the retention is calculated is not changed by the bill; the only change is what exposure time period the retention calculation is based on. This change allows the Fund to be able to publish the aggregate retention by January 1st each year as the bill requires.

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[7] s. 215.555(4)(c)1., F.S.

[8] s. 215.555(4)(c)1., F.S. For mandatory coverage, the maximum amount of coverage is different for each insurer because it is linked directly to the amount of premiums the insurer pays to the FHCF. Thus, insurers that pay higher premiums to the FHCF have more mandatory coverage than those that pay lower premiums.

[9] The actual maximum payout of the Fund is greater than $17.175 billion because the Fund must reimburse insurers for claims under TICL coverage if the insurer purchased TICL coverage from the Fund.

[10] The capacity being set at $17 billion will start with the contract year beginning on June 1, 2010.

[11] The funds may be accumulated from premiums and bonding.

[12] s. 215.555(2)(e)1., F.S. For the current 2009-10 contract year (June 1, 2009 – May 31, 2010), the insurance industry as a whole has an aggregate retention of $7.223 billion for mandatory coverage, meaning the total of all individual insurer retentions/deductibles will hypothetically total to $7.223 billion per event, assuming all participating insurers reached their retention. Although the insurance industry's aggregate deductible/retention totals $7.223 billion, loss recovery from the FHCF is based on an individual insurer meeting its own retention for mandatory coverage prior to losses being reimbursed.

[13] The change in the time period for the retention calculation contained in the bill results in an aggregate retention for the 2010-2011 contract year that is close to the retention for the 2009-2010 contract year. The aggregate retention for the 2009-2010 contract year is $7.223 billion whereas under the bill the aggregate retention for the 2010-2011 contract year is $7.18 billion.

B. SECTION DIRECTORY:

**Section 1**: Amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund.

**Section 2**: Provides an effective date of upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill prevents additional income and surplus decreases for residential property insurers in 2010 due to the FHCF's transitional contract year and the resulting solvency problem because the insurers will be amortizing 12 months of Fund reinsurance costs over 12 months in 2010 and thereafter.

The Fund capacity changes in the bill will allow the Fund to accumulate funds to pay claims without increasing the Fund's capacity. This should reduce the likelihood of assessments on insurers which are passed on to policyholders.[14] In the event assessments are levied, the changes may reduce the amount of the assessments.

Requiring the Fund to publish the specific amount of Fund coverage each year by January 1st should allow insurers to purchase their private reinsurance early in the year. Doing so should enable insurers to more competitively negotiate their private reinsurance which may reduce the cost of the private reinsurance. Private reinsurance costs are passed through to policyholders in rates so if an insurer is able to reduce its private reinsurance costs, its rate should also reduce.

D. FISCAL COMMENTS:

None.

[14] The FHCF is authorized to levy emergency assessments against all property and casualty insurance premiums paid by policyholders (other than workers' compensation, accident and health, federal flood and, until May 31, 2010, medical malpractice), including surplus lines policyholders, when reimbursement premiums and other fund resources are insufficient to cover the Fund's obligations. Annual assessments are capped at 6 percent of premium with respect to losses from any one year and a maximum of 10 percent of premium to fund hurricane losses from multiple years. Revenue bonds issued by the FHCF may be amortized over a term up to 30 years. Thus, the FHCF may levy assessments for as long as 30 years. As of October 2009, the FHCF assessment base was $34.9 billion.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the Florida Hurricane Catastrophe Fund; amending s. 215.555, F.S.; revising the definition of the term "retention"; defining the term "contract year"; revising contract year designations for reimbursement contracts to conform; increasing a limitation on the claims-paying capacity of the fund under certain circumstances; authorizing the State Board of Administration to calculate estimated claims-paying capacity of the fund for specific contract years; revising contract year designations for reimbursement premiums to conform; revising contract year designations for temporary increase in coverage limit options and the TICL options addendum to conform; providing legislative intent; providing timing requirements for the board to adopt reimbursement contracts; providing timing requirements for insurers to execute reimbursement contracts; providing capacity, coverage, and retention information publication requirements for the board; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (e) of subsection (2), paragraphs (b), (c), and (d) of subsection (4), paragraph (b) of subsection (5), and paragraphs (c) through (g) of subsection (17) of section 215.555, Florida Statutes, are amended, paragraph (o) is added to subsection (2), and subsection (18) is added to that section, to read:

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(e) "Retention" means the amount of losses below which an insurer is not entitled to reimbursement from the fund. An insurer's retention shall be calculated as follows:

1. The board shall calculate and report to each insurer the retention multiples for that year. For the contract year beginning June 1, 2005, the retention multiple shall be equal to $4.5 billion divided by the total estimated reimbursement premium for the contract year; for subsequent years, the retention multiple shall be equal to $4.5 billion, adjusted based upon the reported exposure for the contract year 2 years ~~from the~~ prior to a specific contract year to reflect the percentage growth in exposure to the fund for covered policies since 2004, divided by the total estimated reimbursement premium for the contract year. Total reimbursement premium for purposes of the calculation under this subparagraph shall be estimated using the assumption that all insurers have selected the 90-percent coverage level. ~~In 2010, the contract year begins June 1, 2010, and ends December 31, 2010. In 2011 and thereafter, the contract year begins January 1 and ends December 31.~~

2. The retention multiple as determined under subparagraph 1. shall be adjusted to reflect the coverage level elected by the insurer. For insurers electing the 90-percent coverage level, the adjusted retention multiple is 100 percent of the amount determined under subparagraph 1. For insurers electing the 75-percent coverage level, the retention multiple is 120 percent of the amount determined under subparagraph 1. For

insurers electing the 45-percent coverage level, the adjusted retention multiple is 200 percent of the amount determined under subparagraph 1.

3. An insurer shall determine its provisional retention by multiplying its provisional reimbursement premium by the applicable adjusted retention multiple and shall determine its actual retention by multiplying its actual reimbursement premium by the applicable adjusted retention multiple.

4. For insurers who experience multiple covered events causing loss during the contract year, beginning June 1, 2005, each insurer's full retention shall be applied to each of the covered events causing the two largest losses for that insurer. For each other covered event resulting in losses, the insurer's retention shall be reduced to one-third of the full retention. The reimbursement contract shall provide for the reimbursement of losses for each covered event based on the full retention with adjustments made to reflect the reduced retentions on or after January 1 of the contract year provided the insurer reports its losses as specified in the reimbursement contract.

(o) "Contract year" means the period beginning on June 1 of a calendar year and ending on May 31 of the following calendar year.

(4) REIMBURSEMENT CONTRACTS.—

(b)1. The contract shall contain a promise by the board to reimburse the insurer for 45 percent, 75 percent, or 90 percent of its losses from each covered event in excess of the insurer's retention, plus 5 percent of the reimbursed losses to cover loss adjustment expenses.

2. The insurer must elect one of the percentage coverage levels specified in this paragraph and may, upon renewal of a reimbursement contract, elect a lower percentage coverage level if no revenue bonds issued under subsection (6) after a covered event are outstanding, or elect a higher percentage coverage level, regardless of whether or not revenue bonds are outstanding. All members of an insurer group must elect the same percentage coverage level. Any joint underwriting association, risk apportionment plan, or other entity created under s. 627.351 must elect the 90-percent coverage level.

3. The contract shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources.

4. Notwithstanding any other provision contained in this section, the board shall make available to insurers that purchased coverage provided by this subparagraph in 2008, insurers qualifying as limited apportionment companies under s. 627.351(6)(c), and insurers that have been approved to participate in the Insurance Capital Build-Up Incentive Program pursuant to s. 215.5595 a contract or contract addendum that provides an additional amount of reimbursement coverage of up to $10 million. The premium to be charged for this additional reimbursement coverage shall be 50 percent of the additional reimbursement coverage provided, which shall include one prepaid reinstatement. The minimum retention level that an eligible participating insurer must retain associated with this additional coverage layer is 30 percent of the insurer's surplus as of December 31, 2008, for the 2009-2010 contract year; as of

December 31, 2009, for the 2010-2011 contract year ~~beginning June 1, 2010, and ending December 31, 2010~~; and as of December 31, 2010, for the 2011-2012 ~~2011~~ contract year. This coverage shall be in addition to all other coverage that may be provided under this section. The coverage provided by the fund under this subparagraph shall be in addition to the claims-paying capacity as defined in subparagraph (c)1., but only with respect to those insurers that select the additional coverage option and meet the requirements of this subparagraph. The claims-paying capacity with respect to all other participating insurers and limited apportionment companies that do not select the additional coverage option shall be limited to their reimbursement premium's proportionate share of the actual claims-paying capacity otherwise defined in subparagraph (c)1. and as provided for under the terms of the reimbursement contract. The optional coverage retention as specified shall be accessed before the mandatory coverage under the reimbursement contract, but once the limit of coverage selected under this option is exhausted, the insurer's retention under the mandatory coverage will apply. This coverage will apply and be paid concurrently with mandatory coverage. This subparagraph expires on May 31, 2012 ~~December 31, 2011~~.

(c)1. The contract shall also provide that the obligation of the board with respect to all contracts covering a particular contract year shall not exceed the actual claims-paying capacity of the fund up to a limit of $17 ~~$15~~ billion for that contract year unless the board determines that there is sufficient estimated claims-paying capacity to provide $17 billion of

capacity for the current contract year and an additional $17 billion of capacity for subsequent contract years. Upon making such determination, the board shall calculate the estimated claims-paying capacity for a specific contract year by adding to the $17 billion limit one-half of the fund's estimated claims-paying capacity in excess of $34 billion. However, ~~adjusted based upon the reported exposure from the prior contract year to reflect the percentage growth in exposure to the fund for covered policies since 2003, provided~~ the dollar growth in the limit may not increase in any year by an amount greater than the dollar growth of the balance of the fund as of December 31, less any premiums or interest attributable to optional coverage, as defined by rule which occurred over the prior calendar year.

2. In May and October of the contract year, the board shall publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity, the fund's estimated claims-paying capacity, and the projected balance of the fund as of December 31. After the end of each calendar year, the board shall notify insurers of the estimated borrowing capacity, estimated claims-paying capacity, and the balance of the fund as of December 31 to provide insurers with data necessary to assist them in determining their retention and projected payout from the fund for loss reimbursement purposes. In conjunction with the development of the premium formula, as provided for in subsection (5), the board shall publish factors or multiples that assist insurers in determining their retention and projected payout for the next contract year. For all regulatory and reinsurance purposes, an insurer may calculate its projected

payout from the fund as its share of the total fund premium for the current contract year multiplied by the sum of the projected balance of the fund as of December 31 and the estimated borrowing capacity for that contract year as reported under this subparagraph.

(d)1. For purposes of determining potential liability and to aid in the sound administration of the fund, the contract shall require each insurer to report such insurer's losses from each covered event on an interim basis, as directed by the board. The contract shall require the insurer to report to the board no later than December 31 of each year, and quarterly thereafter, its reimbursable losses from covered events for the year. The contract shall require the board to determine and pay, as soon as practicable after receiving these reports of reimbursable losses, the initial amount of reimbursement due and adjustments to this amount based on later loss information. The adjustments to reimbursement amounts shall require the board to pay, or the insurer to return, amounts reflecting the most recent calculation of losses.

2. In determining reimbursements pursuant to this subsection, the contract shall provide that the board shall pay to each insurer such insurer's projected payout, which is the amount of reimbursement it is owed, up to an amount equal to the insurer's share of the actual premium paid for that contract year, multiplied by the actual claims-paying capacity available for that contract year.

3. The board may reimburse insurers for amounts up to the published factors or multiples for determining each

participating insurer's retention and projected payout derived as a result of the development of the premium formula in those situations in which the total reimbursement of losses to such insurers would not exceed the estimated claims-paying capacity of the fund. Otherwise, the projected payout ~~such~~ factors or multiples shall be reduced uniformly among all insurers to reflect the estimated claims-paying capacity.

(5) REIMBURSEMENT PREMIUMS.—

(b) The State Board of Administration shall select an independent consultant to develop a formula for determining the actuarially indicated premium to be paid to the fund. The formula shall specify, for each zip code or other limited geographical area, the amount of premium to be paid by an insurer for each $1,000 of insured value under covered policies in that zip code or other area. In establishing premiums, the board shall consider the coverage elected under paragraph (4)(b) and any factors that tend to enhance the actuarial sophistication of ratemaking for the fund, including deductibles, type of construction, type of coverage provided, relative concentration of risks, and other such factors deemed by the board to be appropriate. The formula must provide for a cash build-up factor. For the 2009-2010 contract year, the factor is 5 percent. For the 2010-2011 contract year ~~beginning June 1, 2010, and ending December 31, 2010~~, the factor is 10 percent. For the 2011-2012 ~~2011~~ contract year, the factor is 15 percent. For the 2012-2013 ~~2012~~ contract year, the factor is 20 percent. For the 2013-2014 ~~2013~~ contract year and thereafter, the factor is 25 percent. The formula may provide for a

procedure to determine the premiums to be paid by new insurers that begin writing covered policies after the beginning of a contract year, taking into consideration when the insurer starts writing covered policies, the potential exposure of the insurer, the potential exposure of the fund, the administrative costs to the insurer and to the fund, and any other factors deemed appropriate by the board. The formula must be approved by unanimous vote of the board. The board may, at any time, revise the formula pursuant to the procedure provided in this paragraph.

(17) TEMPORARY INCREASE IN COVERAGE LIMIT OPTIONS.—

(c) Optional coverage.—For the 2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-2014 contract years ~~year commencing June 1, 2007, and ending May 31, 2008, the contract year commencing June 1, 2008, and ending May 31, 2009, the contract year commencing June 1, 2009, and ending May 31, 2010, the contract year commencing June 1, 2010, and ending December 31, 2010, the contract year commencing January 1, 2011, and ending December 31, 2011, the contract year commencing January 1, 2012, and ending December 31, 2012, and the contract year commencing January 1, 2013, and ending December 31, 2013~~, the board shall offer, for each of such years, the optional coverage as provided in this subsection.

(d) Additional definitions.—As used in this subsection, the term:

1. "FHCF" means Florida Hurricane Catastrophe Fund.

2. "FHCF reimbursement premium" means the premium paid by an insurer for its coverage as a mandatory participant in the

FHCF, but does not include additional premiums for optional coverages.

3. "Payout multiple" means the number or multiple created by dividing the statutorily defined claims-paying capacity as determined in subparagraph (4)(c)1. by the aggregate reimbursement premiums paid by all insurers estimated or projected as of calendar year-end.

4. "TICL" means the temporary increase in coverage limit.

5. "TICL options" means the temporary increase in coverage options created under this subsection.

6. "TICL insurer" means an insurer that has opted to obtain coverage under the TICL options addendum in addition to the coverage provided to the insurer under its FHCF reimbursement contract.

7. "TICL reimbursement premium" means the premium charged by the fund for coverage provided under the TICL option.

8. "TICL coverage multiple" means the coverage multiple when multiplied by an insurer's reimbursement premium that defines the temporary increase in coverage limit.

9. "TICL coverage" means the coverage for an insurer's losses above the insurer's statutorily determined claims-paying capacity based on the claims-paying limit in subparagraph (4)(c)1., which an insurer selects as its temporary increase in coverage from the fund under the TICL options selected. A TICL insurer's increased coverage limit options shall be calculated as follows:

a. The board shall calculate and report to each TICL insurer the TICL coverage multiples based on 12 options for

increasing the insurer's FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion, $2 billion, $3 billion, $4 billion, $5 billion, $6 billion, $7 billion, $8 billion, $9 billion, $10 billion, $11 billion, or $12 billion by the total estimated aggregate FHCF reimbursement premiums for the 2007-2008 contract year, and the 2008-2009 contract year.

b. For the 2009-2010 contract year, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on 10 options for increasing the insurer's FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion, $2 billion, $3 billion, $4 billion, $5 billion, $6 billion, $7 billion, $8 billion, $9 billion, and $10 billion by the total estimated aggregate FHCF reimbursement premiums for the 2009-2010 contract year.

c. For the 2010-2011 contract year ~~beginning June 1, 2010, and ending December 31, 2010~~, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on eight options for increasing the insurer's FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion, $2 billion, $3 billion, $4 billion, $5 billion, $6 billion, $7 billion, and $8 billion by the total estimated aggregate FHCF reimbursement premiums for the contract year.

d. For the 2011-2012 ~~2011~~ contract year, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on six options for increasing the insurer's FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion, $2 billion, $3 billion, $4 billion, $5 billion, and $6 billion by the total estimated aggregate FHCF

reimbursement premiums for the 2011-2012 ~~2011~~ contract year.

e. For the 2012-2013 ~~2012~~ contract year, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on four options for increasing the insurer's FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion, $2 billion, $3 billion, and $4 billion by the total estimated aggregate FHCF reimbursement premiums for the 2012-2013 ~~2012~~ contract year.

f. For the 2013-2014 ~~2013~~ contract year, the board shall calculate and report to each TICL insurer the TICL coverage multiples based on two options for increasing the insurer's FHCF coverage limit. Each TICL coverage multiple shall be calculated by dividing $1 billion and $2 billion by the total estimated aggregate FHCF reimbursement premiums for the 2013-2014 ~~2013~~ contract year.

g. The TICL insurer's increased coverage shall be the FHCF reimbursement premium multiplied by the TICL coverage multiple. In order to determine an insurer's total limit of coverage, an insurer shall add its TICL coverage multiple to its payout multiple. The total shall represent a number that, when multiplied by an insurer's FHCF reimbursement premium for a given reimbursement contract year, defines an insurer's total limit of FHCF reimbursement coverage for that reimbursement contract year.

10. "TICL options addendum" means an addendum to the reimbursement contract reflecting the obligations of the fund and insurers selecting an option to increase an insurer's FHCF coverage limit.

(e) TICL options addendum.—

1. The TICL options addendum shall provide for reimbursement of TICL insurers for covered events occurring during the 2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-2014 contract years ~~between June 1, 2007, and May 31, 2008, between June 1, 2008, and May 31, 2009, between June 1, 2009, and May 31, 2010, between June 1, 2010, and December 31, 2010, between January 1, 2011, and December 31, 2011, between January 1, 2012, and December 31, 2012, or between January 1, 2013, and December 31, 2013,~~ in exchange for the TICL reimbursement premium paid into the fund under paragraph (f) based upon the TICL coverage available and selected for each respective contract year. Any insurer writing covered policies has the option of selecting an increased limit of coverage under the TICL options addendum and shall select such coverage at the time that it executes the FHCF reimbursement contract.

2. The TICL addendum shall contain a promise by the board to reimburse the TICL insurer for 45 percent, 75 percent, or 90 percent of its losses from each covered event in excess of the insurer's retention, plus 5 percent of the reimbursed losses to cover loss adjustment expenses. The percentage shall be the same as the coverage level selected by the insurer under paragraph (4)(b).

3. The TICL addendum shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources.

4. The priorities, schedule, and method of reimbursements under the TICL addendum shall be the same as provided under

subsection (4).

(f) TICL reimbursement premiums.—Each TICL insurer shall pay to the fund, in the manner and at the time provided in the reimbursement contract for payment of reimbursement premiums, a TICL reimbursement premium determined as specified in subsection (5), except that a cash build-up factor does not apply to the TICL reimbursement premiums. However, the TICL reimbursement premium shall be increased in the 2009-2010 contract year ~~2009-2010~~ by a factor of two, in the 2010-2011 contract year ~~beginning June 1, 2010, and ending December 31, 2010,~~ by a factor of three, in the 2011-2012 ~~2011~~ contract year by a factor of four, in the 2012-2013 ~~2012~~ contract year by a factor of five, and in the 2013-2014 ~~2013~~ contract year by a factor of six.

(g) Effect on claims-paying capacity of the fund.—For the 2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-2014 contract years ~~terms commencing June 1, 2007, June 1, 2008, June 1, 2009, June 1, 2010, January 1, 2011, January 1, 2012, and January 1, 2013~~, the program created by this subsection shall increase the claims-paying capacity of the fund as provided in subparagraph (4)(c)1. by an amount not to exceed $12 billion and shall depend on the TICL coverage options available and selected for the specified contract year and the number of insurers that select the TICL optional coverage. The additional capacity shall apply only to the additional coverage provided under the TICL options and shall not otherwise affect any insurer's reimbursement from the fund if the insurer chooses not to select the temporary option to increase its limit of coverage under the

FHCF.

(18) FACILITATION OF INSURERS' PRIVATE CONTRACT NEGOTIATIONS PRIOR TO THE START OF THE HURRICANE SEASON.—

(a)1. In addition to the legislative findings and intent provided in this section, the Legislature finds that:

a. Because a Regular Session of the Legislature begins approximately 3 months before the start of a contract year and ends approximately 1 month before the start of a contract year, participants in the fund always face the possibility that legislative actions will change the coverage provided or offered by the fund with only a few days or weeks of advance notice.

b. The timing issues described in sub-subparagraph a. can create uncertainties and disadvantages for the residential property insurers that are required to participate in the fund when they negotiate for the procurement of private reinsurance or other sources of capital.

c. Providing participating insurers with a greater degree of certainty regarding the coverage provided or offered by the fund and more time to negotiate for the procurement of private reinsurance or other sources of capital will enable the residential property insurance market to operate with greater stability.

d. Increased stability in the residential property insurance market serves a primary purpose of the fund and benefits consumers in this state by enabling insurers to operate more economically. In years when reinsurance and capital markets experience a capital shortage, the last-minute rush by insurers only weeks before the start of the hurricane season to procure

adequate coverage in order to meet their capital requirements can result in higher costs that are passed on to consumers in this state. However, if more time is available, residential property insurers should experience greater competition for their business with a corresponding beneficial effect for consumers in this state.

2. It is the intent of the Legislature to provide insurers with the terms and conditions of the reimbursement contract well in advance of the insurers' need to finalize their procurement of private reinsurance or other sources of capital, and thereby to improve insurers' negotiating position with reinsurers and other sources of capital.

3. It is also the intent of the Legislature that the board publish the fund's maximum statutory limit of coverage and the fund's total retention early enough that residential property insurers have the opportunity to better estimate their coverage from the fund.

(b) The board shall adopt the reimbursement contract for a particular contract year by February 1 of the immediately preceding contract year. However, the reimbursement contract shall be adopted as soon as possible in advance of the 2010-2011 contract year.

(c) Insurers writing covered policies shall execute the reimbursement contract by March 1 of the immediately preceding contract year and the contract shall have an effective date for the contract year as defined in paragraph (2)(o).

(d) The board shall publish in the Florida Administrative Weekly the maximum statutorily adjusted capacity for the

mandatory coverage for a particular contract year, the maximum statutory coverage for any optional coverage for the particular contract year, and the aggregate fund retention used to calculate individual insurer's retention multiples for the particular contract year, no later than January 1 of the immediately preceding contract year.

Section 2. This act shall take effect upon becoming a law.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7003 PCB EUP 10-01 Regulation of Electronic Communications
**SPONSOR(S):** Energy & Utilities Policy Committee and Precourt
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| Orig. Comm.: | Energy & Utilities Policy Committee | 13 Y, 0 N | Keating | Collins |
| 1) | General Government Policy Council | | Keating | Hamby |
| 2) | | | | |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |

## SUMMARY ANALYSIS

This bill repeals the entirety of chapter 363, F.S., which establishes penalties and liability provisions related to the transmission of messages by telegraph. As telegraph service appears no longer to be provided in Florida, the provisions of chapter 363, F.S., appear to be outdated and no longer applicable.

The bill also repeals s. 364.059, F.S., which provides procedures available to substantially interested parties in the event a local exchange telecommunications company elects, pursuant to s. 364.051(6), F.S., to have its basic local telecommunications services treated the same as its nonbasic services. Section 364.051(6), F.S., was repealed in 2007, so the election provided under that section is no longer available to local exchange telecommunications companies. Thus, the provisions of s. 364.059, F.S., are no longer effective.

The bill has no fiscal impact on state or local governments.

The effective date of the bill is July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Repeal of Chapter 363, F.S.

Chapter 363, F.S., establishes penalties and liability provisions related to the transmission of messages by telegraph. Sections 363.02 through 363.05, F.S., establish penalties and liability provisions for a telegraph company that negligently fails to promptly transmit and deliver messages or refuses to receive for transmission any legible messages provided to the company for transmission. Further, section 363.06, F.S., provides that persons engaged in the business of sending telegrams are liable for damages for mental anguish and physical suffering resulting from negligent failure to promptly and correctly transmit or deliver a telegram. Section 363.08, F.S., establishes liability for persons engaged in the business of sending telegrams in cipher for negligent failure to promptly transmit and deliver a telegram in cipher. Section 363.10, F.S., provides that contractual provisions intended to limit the liability imposed in this chapter are illegal and void. The provisions of this chapter do not apply to interstate transmissions of telegraph messages.[1]

The current provisions of ch. 363, F.S., have remained substantively unchanged in the law since at least 1913.[2] Sections 363.02, 363.03, and 363.05, F.S., were adopted in 1907 and have remained in law since then without amendment. Section 363.04, F.S., was adopted in 1907 and was changed once, in 1945, with a one word technical amendment. Sections 363.06-.10, F.S., were adopted in 1913 and have remained in law since then without amendment. No court opinions related to these provisions have been published since 1945.

Samuel Morse, inventor of the Morse code, sent the first telegram from Washington to Baltimore on May 26, 1844, to his partner Alfred Vail to usher in the telegram era that displaced the Pony Express. It read "WHAT HATH GOD WROUGHT?"[3] We now have a more modern answer to that question, as transmitting and receiving messages by telegraph has been replaced by the speed and widespread availability of e-mail, faxes, inexpensive long-distance telephone service, instant messaging,[4] Twitter, and Facebook. Western Union Telegraph Company, perhaps the most well-known telegraph service

[1] Price v. Western Union Tel. Co., 23 So.2d 491 (Fla. 1945) ("sending of a telegraph message from one state into another is a transaction in interstate commerce").
[2] Former s. 363.01, F.S., adopted in 1885, established a per-word rate cap for telegraph messages. This provision was repealed in 2000.
[3] http://www.wired.com/science/discoveries/news/2006/02/70147
[4] http://en.wikipedia.org/wiki/Telegraphy; http://www.npr.org/templates/story/story.php?storyId=5186113

provider, sent its last telegram on January 27, 2006.[5] As a result, it appears that the provisions of chapter 363, F.S., are outdated and no longer applicable.[6]

The bill repeals the provisions of Chapter 363, F.S.

Repeal of Section 364.059, F.S.

Section 364.059, F.S., provides procedures available to substantially interested parties in the event a local exchange telecommunications company elects, pursuant to s. 364.051(6), F.S., to have its basic local telecommunications services treated the same as its nonbasic services.

In 2007, subsections (6), (7), and (8) of s. 364.051, F.S., were repealed by s. 10, ch. 2007-29, L.O.F. Thus, the election available in s. 364.051(6), F.S., is no longer available to local exchange telecommunications companies, making the procedures in s. 364.059, F.S., without effect and obsolete.

The bill repeals s. 364.059, F.S.

B. SECTION DIRECTORY:

**Section 1.** Repeals ss. 363.02, 363.03, 363.04, 363.05, 363.06, 363.07, 363.08, 363.09, and 363.10, F.S., relating to liability and damages for failure to transmit or deliver telegraph messages.

**Section 2.** Repeals s. 364.059, F.S., relating to procedures for petitions to stay implementation of price changes due to a local exchange telecommunications company electing to have its basic local exchange telecommunications services treated the same as its nonbasic services.

**Section 3.** Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

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[5] http://www.npr.org/templates/story/story.php?storyId=5186113; http://www.wired.com/science/discoveries/news/2006/02/70147

[6] Staff is unable to identify any company operating in Florida that provides telegram service. According to the Internet source cited in footnote 8 (Wikipedia), there are two telegram services operating in the United States. Neither company is registered in the state of Florida. An Internet search found that one of the two is based in Canada and provides an international telegram service, and the other could not be found.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to regulation of electronic communications; repealing ch. 363, F.S., relating to regulation of telegraph companies; removing provisions requiring transmission and delivery of messages; removing provisions relating to liability and recovery of damages; repealing s. 364.059, F.S., relating to telecommunications services; removing procedures for a petition to the Public Service Commission to stay implementation of price changes due to a local exchange telecommunications company electing to have its basic local telecommunications services treated the same as its nonbasic services; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Sections 363.02, 363.03, 363.04, 363.05, 363.06, 363.07, 363.08, 363.09, and 363.10, Florida Statutes, are repealed.

Section 2. Section 364.059, Florida Statutes, is repealed.

Section 3. This act shall take effect July 1, 2010.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7007 PCB ANR 10-02 Pollutant Discharge Prevention and Removal
**SPONSOR(S):** Agriculture & Natural Resources Policy Committee; Williams, T.
**TIED BILLS:** SB 1412 **IDEN./SIM. BILLS:** None

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| Orig. Comm.: | Agriculture & Natural Resources Policy Committee | 11 Y, 0 N | Blalock | Reese |
| 1) | General Government Policy Council | | Blalock MB | Hamby |
| 2) | | | | |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |

## SUMMARY ANALYSIS

Section 376.17, F.S., requires that the Department of Environmental Protection (DEP) include in its recommendations to each regular session of the Legislature specific recommendations relating to the operation of the Pollutant Discharge Prevention and Control Act (the Act). The Act regulates and requires cleanup of discharges of oil and other pollutants that occur within Florida's coastal waters. The DEP has made recommendations in the past as the Act was evolving, but it is no longer necessary for the DEP to provide yearly recommendations. This section is outdated and no longer being implemented or enforced as the need for recommendations and revisions has diminished. Therefore, this bill is repealing this section of statute.

The Preapproved Advanced Cleanup Program was established by the Legislature to allow DEP to enter into service contracts with responsible parties in advance of the site's priority ranking if the responsible party agrees to enter into a cost sharing arrangement for the purpose of financing site-rehabilitation of contaminated property. Subsection (5) of the statute also required DEP to submit a report by December 31, 1998, to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the progress and level of activity under the program. As December 31, 1998 has passed, this subsection is outdated and ineffective, and therefore, this bill is deleting subsection (5) from s. 376.30713, F.S.

This bill does not appear to have a significant fiscal impact on state or local government.

This bill has an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Reports to the Legislature Regarding the Operation of the Pollutant Discharge Prevention and Control Act**

Background

In 1970, the Florida Legislature created the Pollutant Discharge Prevention and Control Act (the Act). The Act largely parallels provisions of the federal Clean Water Act that prohibit coastal and ocean discharges of pollutants and provides that any person discharging a pollutant into Florida waters is responsible for the immediate cleanup of the substance. Section 376.041, F.S., generally prohibits the discharge of pollutants into or upon any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state. The term "discharge" as defined in s. 376.031, F.S., includes, but is not limited to, any spilling, leaking, seeping, pouring, emitting, emptying, or dumping that occurs within the territorial limits of the state or outside the territorial limits of the state and affects lands and waters within the territorial limits of the state. Penalties for discharging oil or other pollutants may be as much as $50,000 per day. Violators are liable for cleanup costs, and can be required to compensate the state for any damage done to the state's natural resources.

Effect of the Bill

Section 376.17, F.S., requires that the Department of Environmental Protection (DEP) include in its recommendations to each regular session of the Legislature specific recommendations relating to the operation of the Act. The DEP has made recommendations in the past as the Act was evolving, but no longer provides annual reports and this section is no longer being enforced as the need for recommendations or revisions has diminished. This section of statute is outdated, ineffective, and no longer being enforced.[1]

[1] According to the Department of Environmental Protection, the Pollutant Discharge Prevention and Control Act has been implemented successfully through the years with minimal need for amendments. Three years ago DEP proposed an amendment related to the natural resource damage assessment program in section 376.121, but have not had to propose any other adjustments through the years.

**Report on the Progress of the Preapproved Advanced Cleanup Program**

Background

Section 376.30713, F.S., authorizes the Department of Environmental Protection (DEP) to enter into service contracts for the purpose of financing site-rehabilitation of contaminated property. Recognizing that "the inability to conduct site rehabilitation in advance of a site's priority ranking may substantially impede or prohibit property transactions or the proper completion of public works projects," the Legislature established the Preapproved Advanced Cleanup Program (PACP).[2] Under the PACP, responsible parties may apply for cleanup funding in advance of the site's priority ranking if the responsible party is willing to enter into a cost sharing arrangement.[3] Subsection (5) of the PACP required the DEP to submit a report by December 31, 1998, to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the progress and level of activity under the provisions of this section. As December 31, 1998 has passed, this subsection is outdated and ineffective.

Effect of the Bill

This bill is deleting section 376.30713(5), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 376.011, F.S., to revise a cross-reference.

Section 2: Repeals s. 376.17, F.S., relating to reports to the legislature.

Section 3: Deletes section 376.30713(5), F.S., relating to the preapproved advanced cleanup reporting requirement.

Section 4: Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

[2] Section 376.30713(1)(a) , F.S.
[3] Section 376.30713(1)(c)-(d), F.S.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the pollutant discharge prevention and removal; amending s. 376.011, F.S.; clarifying a reference; repealing s. 376.17, F.S., relating to reports to the Legislature, to eliminate a requirement that the Department of Environmental Protection include in its recommendations to each regular session of the Legislature specific recommendations relating to the operation of the Pollutant Discharge Prevention and Control Act; amending s. 376.30713, F.S.; removing obsolete language requiring the Department of Environmental Protection to submit a report relating to preapproved advanced cleanup of petroleum contamination sites to the Governor and the Legislature; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 376.011, Florida Statutes, is amended to read:

376.011 Pollutant Discharge Prevention and Control Act; short title.—Sections 376.011-376.21 ~~376.011-376.17, 376.19-376.21~~ shall be known as the "Pollutant Discharge Prevention and Control Act."

Section 2. Section 376.17, Florida Statutes, is repealed.

Section 3. Subsection (6) of section 376.30713, Florida Statutes, is renumbered as subsection (5), and present subsection (5) of that section is amended to read:

376.30713 Preapproved advanced cleanup.—



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~(5) By December 31, 1998, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the progress and level of activity under the provisions of this section. The report shall include the following information:~~

~~(a) A list of sites under a preapproved advanced cleanup contract, to be identified by the facility number.~~

~~(b) The total number of preapproved advanced cleanup applications submitted to the department.~~

~~(c) The priority ranking scores of each participating site.~~

~~(d) The total amount of contract work authorized and conducted for each site and the percentage and amount of cost share.~~

~~(e) The total revenues received under the provisions of this section.~~

~~(f) The annual costs of administering the provisions of this section.~~

~~(g) The recommended annual budget for the provisions of this section.~~

Section 4. This act shall take effect July 1, 2010.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7009 PCB ANR 10-04 Aquaculture
**SPONSOR(S):** Agriculture & Natural Resources Policy Committee, Williams, T.
**TIED BILLS:** **IDEN./SIM. BILLS:**

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| Orig. Comm.: | Agriculture & Natural Resources Policy Committee | 11 Y, 0 N | Deslatte | Reese |
| 1) | General Government Policy Council | | Deslatte | Hamby |
| 2) | | | | |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |

## SUMMARY ANALYSIS

The bill repeals subsection (8) of s. 379.2523, F.S., which requires the Fish and Wildlife Conservation Commission (FWCC) to provide assistance to the Department of Agriculture and Consumer Services (DACS) in the development of an aquaculture plan for the state.

The bill has no fiscal impact.

The bill has an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Aquaculture is defined as the cultivation of aquatic organisms[1]. Aquaculture products are defined as aquatic organisms and any product derived from aquatic organisms that are owned and propagated, grown, or produced under controlled conditions[2]. In Florida, commercial aquaculture consists mainly of the following:

- Tropical ornamental fish and invertebrates
- Marine ornamental species and live rock
- Molluscs, including clams, oysters, scallops, and mussels
- Marine and freshwater crustaceans
- Alligators
- Food fish, including catfish, tilapia, and sturgeon
- Gamefish fingerlings, including largemouth bass, bream, and catfish
- Triploid grass carp, turtles, snails, and frogs

The Florida Legislature enacted the Florida Aquaculture Policy Act (Chapter 597, F.S.) for the purpose of enhancing the growth of aquaculture while protecting the environment. Under the Act, DACS is responsible for coordinating research and development and providing assistance to persons in the industry. In 1999, the Division of Aquaculture was created to help meet the objectives of the Act.

DACS finalized the Florida Aquaculture Plan in consultation with industry, research institutions, and federal, state, and local agencies. It is considered the blueprint for developing aquaculture in the state, and is intended to assure effective and nonduplicative efforts to expand aquaculture development and prioritize research and funding needs. The Plan provides an analysis of industry status and identifies technical, production, economic, and market related challenges that must be solved to insure continued growth and expansion. The Act also directs DACS to annually revise the Florida Aquaculture Plan.

FWCC has constitutional and statutory authority powers over terrestrial, freshwater, and marine fish and wildlife. For commercial aquaculture, the FWC "maintains lists of prohibited and conditional restricted nonnative aquatic species, prohibits the commercial sale of products derived from certain game fish, issues a Special Activity License for broodstock collection, and operates marine and freshwater hatcheries for fish and shellfish stock enhancement." Under s. 379.2523 (8), F.S., the FWC is directed to assist DACS in the development of a state Aquaculture Plan.

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[1] Section 597.0015, F.S.
[2] *Id*

The Aquaculture Interagency Coordinating Council (AICC) was created by the Aquaculture Policy Act to encourage the development of Florida aquaculture by establishing positive interagency cooperation. The AICC consists of several state agencies including DACS, FWCC, the Department of Environmental Protection, the Department of Community Affairs, and the Office of Trade, Tourism and Economic Development. The AICC also consists of several universities that have regulatory, research, extension, or economic development responsibilities affecting commercial aquaculturalists. The AICC is a forum for the discussion of governmental aquaculture regulations and the formulation of policy alternatives to facilitate aquaculture development.

**Effect of Proposed Changes**

The bill repeals subsection (8) of s. 379.2523, F.S., which requires the FWCC to provide assistance to the DACS in the development of an aquaculture plan for the state. Since a state plan has been developed, this subsection is no longer necessary.

B. SECTION DIRECTORY:

**Section 1.** Repeals subsection (8) of s. 379.2523, F.S.

**Section 2.** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

   None

C. DRAFTING ISSUES OR OTHER COMMENTS:

   According to FWCC's analysis, the repeal of s. 379.2523 (8), F.S., will be beneficial because the statute will be simplified. FWCC and DACS will continue to cooperate and coordinate efforts under statutory direction and through the AICC.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to aquaculture; amending s. 379.2523, F.S.; eliminating a requirement that the Fish and Wildlife Conservation Commission provide assistance to the Department of Agriculture and Consumer Services in the development of an aquaculture plan for the state; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (8) of section 379.2523, Florida Statutes, is amended to read:

379.2523 Aquaculture definitions; marine aquaculture products, producers, and facilities.—

~~(8) The Fish and Wildlife Conservation Commission shall provide assistance to the Department of Agriculture and Consumer Services in the development of an aquaculture plan for the state.~~

Section 2. This act shall take effect July 1, 2010.

HB 7011

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7011 PCB ANR 10-05 South Florida Tropical Fruit Plan
**SPONSOR(S):** Agriculture & Natural Resources Policy Committee
**TIED BILLS:** **IDEN./SIM. BILLS:**

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| Orig. Comm.: | Agriculture & Natural Resources Policy Committee | 11 Y, 0 N | Thompson | Reese |
| 1) | General Government Policy Council | | Thompson JT | Hamby |
| 2) | | | | |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |

## SUMMARY ANALYSIS

Currently, s. 603.204, F.S., requires the Commissioner of the Department of Agriculture and Consumer Services (DACS) in consultation with the Tropical Fruit Advisory Council, to submit the South Florida Tropical Fruit Plan (plan) 90 days prior to the 1991 legislative session to the President of the Senate, the Speaker of the House of Representatives, and the chairs of the appropriate Senate and House committees.

The law requires the plan to identify problems and constraints relating to the tropical fruit industry, and develop solutions and growth planning mechanisms for the tropical fruit industry. In support of the development of said solutions and mechanisms, the plan provides for the following reporting requirements:

- Revisions and updates to be submitted biennially,
- Progress reports and budget requests to be submitted annually,
- Educational or research recommendations to the University of Florida Institute of Food and Agricultural Sciences, and
- Regulation or marketing recommendations to DACS.

According to DACS, the reporting requirements of the plan are outdated and no longer being carried out. However, recent prolonged subfreezing temperatures threatening crops and tropical vegetation in South Florida have revived a need for the problem solving mechanisms provided for under the plan.

The bill amends s. 603.204, F.S., deleting all reporting requirements.

There is no direct fiscal impact.

The bill has an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

During the 1990 regular session, the Legislature enacted Part II, Chapter 603, "The Florida Tropical Fruit Policy Act" [1] (act) to help develop the production and utilization of the tropical fruit industry. The act provides for legislative intent; creates the Tropical Fruit Advisory Council[2] within the Department of Agriculture and Consumer Services (DACS); and requires the Commissioner of Agriculture, in consultation with the Tropical Fruit Advisory Council, to submit to the legislature, the South Florida Tropical Fruit Plan.[3]

Current Situation

Currently, the South Florida Tropical Fruit Plan requires the Commissioner of Agriculture, in consultation with the Tropical Fruit Advisory Council, to submit the plan 90 days prior to the 1991 Legislative Session to the President of the Senate, the Speaker of the House of Representatives, and the chairs of the appropriate Senate and House committees. Subsequent revisions and updates of the plan are directed to be submitted biennially while progress reports and budget requests are to be submitted annually.

The mission of the South Florida Tropical Fruit Plan is to identify problems and constraints of the tropical fruit industry, propose possible solutions to such problems, and develop planning mechanisms for orderly growth of the industry.[4] These solutions and mechanisms include, but are not limited to, the submittal of:

- Educational or research recommendations to the University of Florida Institute of Food and Agricultural Sciences, and
- Regulation or marketing recommendations to DACS.

According to DACS, the last official progress report was submitted in 2001 and there have been no updates of the biennial plan. In 2007, it was recommended by DACS that the Tropical Fruit Advisory Council be repealed due to its inactive status. The Council has not met since then and there have

[1] Ch. 1990-277, Laws of Florida
[2] s. 603.203, F.S.
[3] s. 603.204, F.S.
[4] s. 603.204(1), F.S.

been no expenses related to the Council. The Legislature proposed a repeal of the South Florida Tropical Fruit Plan in 2008[5] and 2009.[6] All three proposals were not successful.

Proposed Changes

The bill amends s. 603.204, F.S., deleting the following reporting requirements:

- Submittal of the plan 90 days prior to the 1991 Legislative Session to the President of the Senate, the Speaker of the House of Representatives, and the chairs of the appropriate Senate and House committees;
- Submittal of revisions and updates to the plan biennially;
- Submittal of progress reports and budget requests annually; and
- Submittal of recommendations relating to regulation or marketing to DACS.

According to DACS, the reporting requirements of the plan are outdated and no longer being carried out. However, recent prolonged subfreezing temperatures threatening crops and tropical vegetation in South Florida have revived a need for the problem solving mechanisms provided for under the plan. Therefore, by removing only the reporting requirement, the mechanisms for identifying and solving problems and constraints of the tropical fruit industry and the associated benefits are allowed to remain.

B. SECTION DIRECTORY:

Section 1. Amends s. 603.204, F.S.; deleting the reporting requirements of the South Florida Tropical Fruit Plan.

Section 2. Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

[5] SB 884
[6] CS,CS,SB 2160

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The recent subfreezing temperatures experienced in January of 2010 severely threatened South Florida crops and tropical vegetation. Florida Agriculture Commissioner Charles Bronson requested and received from the Governor a state of emergency to assist farmers dealing with crop damage from the freeze. Consequently, the tropical fruit industry and DACS have expressed a renewed interest in the Florida Tropical Fruit Policy Act and the primary responsibility of the Tropical Fruit Advisory Council - the South Florida Tropical Fruit Plan - which contains mechanisms for identifying and solving problems and constraints of the tropical fruit industry such as severe weather damage.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the South Florida Tropical Fruit Plan; amending s. 603.204, F.S.; revising provisions relating to the plan; eliminating a requirement for the Commissioner of Agriculture, in consultation with the Tropical Fruit Advisory Council, to submit plans, reports, and budget requests relating to the tropical fruit industry to the Legislature; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 603.204, Florida Statutes, is amended to read:

603.204 South Florida Tropical Fruit Plan.—

~~(1)~~ The Commissioner of Agriculture, in consultation with the Tropical Fruit Advisory Council, shall develop and update~~, at least 90 days prior to the 1991 legislative session, submit to the President of the Senate, the Speaker of the House of Representatives, and the chairs of appropriate Senate and House of Representatives committees,~~ a South Florida Tropical Fruit Plan, which shall identify problems and constraints of the tropical fruit industry, propose possible solutions to such problems, and develop planning mechanisms for orderly growth of the industry, including:

(1)~~(a)~~ Criteria for tropical fruit research, service, and management priorities.

(2)~~(b)~~ ~~Additional~~ Proposed legislation that ~~which~~ may be required.

(3) ~~(c)~~ Plans relating to other tropical fruit programs and related disciplines in the State University System.

(4) ~~(d)~~ Potential tropical fruit products in terms of market and needs for development.

(5) ~~(e)~~ Evaluation of production and fresh fruit policy alternatives, including, but not limited to, setting minimum grades and standards, promotion and advertising, development of production and marketing strategies, and setting minimum standards on types and quality of nursery plants.

(6) ~~(f)~~ Evaluation of policy alternatives for processed tropical fruit products, including, but not limited to, setting minimum quality standards and development of production and marketing strategies.

(7) ~~(g)~~ Research and service priorities for further development of the tropical fruit industry.

(8) ~~(h)~~ Identification of state agencies and public and private institutions concerned with research, education, extension, services, planning, promotion, and marketing functions related to tropical fruit development, and delineation of contributions and responsibilities. The recommendations in the ~~South Florida Tropical Fruit~~ plan relating to education or research shall be submitted to the Institute of Food and Agricultural Sciences. ~~The recommendations relating to regulation or marketing shall be submitted to the Department of Agriculture and Consumer Services.~~

(9) ~~(i)~~ Business planning, investment potential, financial risks, and economics of production and use ~~utilization~~.

~~(2) A revision and update of the South Florida Tropical~~

~~Fruit Plan shall be submitted biennially, and a progress report and budget request shall be submitted annually, to the officials specified in subsection (1).~~

Section 2. This act shall take effect July 1, 2010.

HB 7013

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7013 PCB ANR 10-06 Interagency Agreements for the Management of State Water Resources
**SPONSOR(S):** Agriculture & Natural Resources Policy Committee, Williams, T.
**TIED BILLS:** **IDEN./SIM. BILLS:**

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| Orig. Comm.: | Agriculture & Natural Resources Policy Committee | 11 Y, 0 N | Kliner | Reese |
| 1) | General Government Policy Council | | Kliner | Hamby |
| 2) | | | | |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |

## SUMMARY ANALYSIS

Pursuant to subsection (4) of s. 373.046, F.S., the secretary of the Department of Environmental Protection (DEP) is required to submit a report to the President of the Senate and the Speaker of the House of Representatives regarding the efficiency of the procedures and the division of responsibilities between the DEP and the five water management districts, as well as the progress toward the execution of interagency agreements and the integration of permitting with sovereignty lands approval. The report also must consider the feasibility of improving the protection of the environment through comprehensive criteria for protection of natural systems. As the report was due by December 10, 1993, reference to this report is obsolete and is removed from Florida Statutes.

The bill has no fiscal impact.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The state regulates and permits activities that affect wetlands primarily through the Environmental Resource Permit (ERP) program. The program is implemented jointly by the Department of Environmental Protection (DEP) and four of the five water management districts.[1] Operating Agreements between the DEP and the water management districts (the Districts) outline specific responsibilities to each agency for any given application. Under those agreements, the DEP generally reviews and takes actions on applications involving:

- Solid waste, hazardous waste, domestic waste, and industrial waste facilities;
- Mining;
- Power plants, transmission and communication cables and lines, natural gas and petroleum exploration, production, and distribution lines and facilities;
- Docking facilities and attendant structures and dredging that are not part of a larger plan of residential or commercial development;
- Navigational dredging conducted by governmental entities, except when part of a larger project that a District has the responsibility to permit;
- Systems serving only one single-family dwelling unit or residential unit not part of a larger common plan of development;
- Systems located in whole or in part seaward of the coastal construction control line;
- Seaports; and
- Smaller, separate water-related activities not part of a larger plan of development (such as boat ramps, mooring buoys, and artificial reefs)

The Districts are responsible for reviewing and taking action on all other applications, mostly commercial and residential development, including ERPs, the drilling of water wells and consumptive use permits.

Subsection (4) of s.373.046, F.S., authorizes the Districts and the DEP to modify the division of responsibilities and to enter into further interagency agreements by rulemaking, including incorporation by reference, pursuant to chapter 120, F.S., to provide for greater efficiency and to avoid duplication in

[1] The Northwest Florida Water Management District, which has implemented rules for stormwater permitting only, effective October 1, 2007, plans to be permitting its own ERPs this year.

the administration of part IV of chapter 373, F.S. (The Management and Storage of Surface Waters), by designating certain activities which will be regulated by either the Districts or the DEP. In developing the interagency agreements, the Districts and the DEP should take into consideration the technical and fiscal ability of each water management district to implement all or some of the provisions of part IV of this chapter 373, F.S.

Pursuant to this subsection, by December 10, 1993, the secretary of the DEP shall submit a report to the President of the Senate and the Speaker of the House of Representatives regarding the efficiency of the procedures and the division of responsibilities contemplated by this subsection and regarding progress toward the execution of further interagency agreements and the integration of permitting with sovereignty lands approval. The report also must consider the feasibility of improving the protection of the environment through comprehensive criteria for protection of natural systems.

Effect of Proposed Changes

Reference to the report due December 10, 1993, is removed from Florida Statutes.

B. SECTION DIRECTORY:

Section 1. amends subsection (4) of section 373.046, F.S., removing reference to a report that was due in 1993.

Section 2. provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None

D. FISCAL COMMENTS: None

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other: None noted

B. RULE-MAKING AUTHORITY: None

C. DRAFTING ISSUES OR OTHER COMMENTS: None

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to interagency agreements for the management of state water resources; amending s. 373.046, F.S.; removing obsolete language requiring the Secretary of Environmental Protection to submit a report relating to certain interagency agreements and environmental protection measures to the Legislature by a specified date; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 373.046, Florida Statutes, is amended to read:

373.046 Interagency agreements.—

(4) The Legislature recognizes and affirms the division of responsibilities between the department and the water management districts as set forth in ss. III. and X. of each of the operating agreements codified as rules 17-101.040(12)(a)3., 4., and 5., Florida Administrative Code. Section IV.A.2.a. of each operating agreement regarding individual permit oversight is rescinded. The department shall be responsible for permitting those activities under part IV of this chapter which, because of their complexity and magnitude, need to be economically and efficiently evaluated at the state level, including, but not limited to, mining, hazardous waste management facilities and solid waste management facilities that do not qualify for a general permit under chapter 403. With regard to postcertification information submittals for activities

authorized under chapters 341 and 403 siting act certifications, the department, after consultation with the appropriate water management district and other agencies having applicable regulatory jurisdiction, shall be responsible for determining the permittee's compliance with conditions of certification which were based upon the nonprocedural requirements of part IV of this chapter. The Legislature authorizes the water management districts and the department to modify the division of responsibilities referenced in this section and enter into further interagency agreements by rulemaking, including incorporation by reference, pursuant to chapter 120, to provide for greater efficiency and to avoid duplication in the administration of part IV of this chapter by designating certain activities which will be regulated by either the water management districts or the department. In developing such interagency agreements, the water management districts and the department should take into consideration the technical and fiscal ability of each water management district to implement all or some of the provisions of part IV of this chapter. Nothing herein rescinds or restricts the authority of the districts to regulate silviculture and agriculture pursuant to part IV of this chapter or s. 403.927. ~~By December 10, 1993, the secretary of the department shall submit a report to the President of the Senate and the Speaker of the House of Representatives regarding the efficiency of the procedures and the division of responsibilities contemplated by this subsection and regarding progress toward the execution of further interagency agreements and the integration of permitting with~~

~~sovereignty lands approval. The report also will consider the feasibility of improving the protection of the environment through comprehensive criteria for protection of natural systems.~~

Section 2. This act shall take effect July 1, 2010.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7015 PCB ANR 10-07 Water Protection and Sustainability Program
**SPONSOR(S):** Agriculture & Natural Resources Policy Committee, Williams, T.
**TIED BILLS:** **IDEN./SIM. BILLS:**

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| Orig. Comm.: | Agriculture & Natural Resources Policy Committee | 13 Y, 0 N | Kliner | Reese |
| 1) | General Government Policy Council | | Kliner | Hamby |
| 2) | | | | |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |

## SUMMARY ANALYSIS

The Water Protection and Sustainability Program (s. 403.890, F.S.) was established in 2005 to support water-related programs such as Total Maximum Daily Loads, Surface Water Improvement Management and Disadvantaged Small Community Wastewater Grants. When available, the program also includes funding for alternative water supply development projects such as desalination, reuse and reservoirs.

Subsection (4) of s. 403.890, F.S., contains obsolete language relating to the Legislature, prior to the end of the 2008 Regular Session, reviewing the distribution of funds under the Water Protection and Sustainability Program to determine if revisions to the funding formula are required. Reference to this Legislative review and reference to the discretion to conduct interim studies on this issue are removed from Florida Statutes by this bill.

The bill has no fiscal impact.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Water Protection and Sustainability Program (s. 403.890, F.S.) was established in 2005 to support water-related programs such as Total Maximum Daily Loads, Surface Water Improvement Management and Disadvantaged Small Community Wastewater Grants. When available, the program also includes funding for alternative water supply development projects such as desalination, reuse and reservoirs. Subsection (4) of this section provides a distribution schedule from the Water Protection and Sustainability Program Trust Fund to various governmental entities for certain fiscal years.

Subsection (4) of s. 403.890, F.S., contains obsolete language relating to the Legislature, prior to the end of the 2008 Regular Session, reviewing the distribution of funds under the Water Protection and Sustainability Program to determine if revisions to the funding formula are required. In addition, at the discretion of the President of the Senate and the Speaker of the House of Representatives, the appropriate substantive committees of the Legislature may conduct an interim project to review the Water Protection and Sustainability Program and the funding formula and make written recommendations to the Legislature proposing necessary changes, if any.

Effect of Proposed Changes

Reference to this Legislative review and reference to the discretion to conduct interim studies on this issue are removed from Florida Statutes.

B. SECTION DIRECTORY:

Section 1. amends subsection (4) of s. 403.890, F.S., to remove obsolete language.

Section 2. provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None

2. Expenditures: None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None

2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS: None

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other: None noted.

B. RULE-MAKING AUTHORITY: None

C. DRAFTING ISSUES OR OTHER COMMENTS: None

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Water Protection and Sustainability Program; amending s. 403.890, F.S.; removing obsolete language requiring the Legislature to review the distribution of funds under the Water Protection and Sustainability Program; deleting provisions for an interim project relating to the program and its funding formula; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 403.890, Florida Statutes, is amended to read:

403.890 Water Protection and Sustainability Program; intent; goals; purposes.—

(4) For fiscal year 2005-2006, funds deposited or appropriated into the Water Protection and Sustainability Program Trust Fund shall be distributed as follows:

(a) One hundred million dollars to the Department of Environmental Protection for the implementation of an alternative water supply program as provided in s. 373.1961.

(b) Funds remaining after the distribution provided for in subsection (1) shall be distributed as follows:

1. Fifty percent for the implementation of best management practices and capital project expenditures necessary for the implementation of the goals of the total maximum daily load program established in s. 403.067. Of these funds, 85 percent shall be transferred to the credit of the Department of

Environmental Protection Water Quality Assurance Trust Fund to address water quality impacts associated with nonagricultural nonpoint sources. Fifteen percent of these funds shall be transferred to the Department of Agriculture and Consumer Services General Inspection Trust Fund to address water quality impacts associated with agricultural nonpoint sources. These funds shall be used for research, development, demonstration, and implementation of suitable best management practices or other measures used to achieve water quality standards in surface waters and water segments identified pursuant to s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq. Implementation of best management practices and other measures may include cost-share grants, technical assistance, implementation tracking, and conservation leases or other agreements for water quality improvement. The Department of Environmental Protection and the Department of Agriculture and Consumer Services may adopt rules governing the distribution of funds for implementation of best management practices. These funds shall not be used to abrogate the financial responsibility of those point and nonpoint sources that have contributed to the degradation of water or land areas. Increased priority shall be given by the department and the water management district governing boards to those projects that have secured a cost-sharing agreement allocating responsibility for the cleanup of point and nonpoint sources.

2. Twenty-five percent for the purposes of funding projects pursuant to ss. 373.451-373.459 or surface water restoration activities in water-management-district-designated

priority water bodies. The Secretary of Environmental Protection shall ensure that each water management district receives the following percentage of funds annually:

a. Thirty-five percent to the South Florida Water Management District;

b. Twenty-five percent to the Southwest Florida Water Management District;

c. Twenty-five percent to the St. Johns River Water Management District;

d. Seven and one-half percent to the Suwannee River Water Management District; and

e. Seven and one-half percent to the Northwest Florida Water Management District.

3. Twenty-five percent to the Department of Environmental Protection for the Disadvantaged Small Community Wastewater Grant Program as provided in s. 403.1838.

~~Prior to the end of the 2008 Regular Session, the Legislature must review the distribution of funds under the Water Protection and Sustainability Program to determine if revisions to the funding formula are required. At the discretion of the President of the Senate and the Speaker of the House of Representatives, the appropriate substantive committees of the Legislature may conduct an interim project to review the Water Protection and Sustainability Program and the funding formula and make written recommendations to the Legislature proposing necessary changes, if any.~~

Section 2. This act shall take effect July 1, 2010.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7023 PCB IBFA 10-03 Repeal of Obsolete Insurance Provisions
**SPONSOR(S):** Insurance, Business & Financial Affairs Policy Committee, Patterson
**TIED BILLS:** **IDEN./SIM. BILLS:**

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| Orig. Comm.: | Insurance, Business & Financial Affairs Policy Committee | 14 Y, 0 N | Callaway | Cooper |
| 1) | General Government Policy Council | | Callaway | Hamby |
| 2) | | | | |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |

## SUMMARY ANALYSIS

This bill deletes outdated or obsolete language relating to the following insurance topics:

- the Florida Automobile Joint Underwriting Association pre-suit notice,
- a report on private insurers issuing and servicing wind-only policies of Citizens Property Insurance Corporation,
- a form filing for catastrophic ground cover collapse coverage,
- a report on the sinkhole database,
- a Florida Sinkhole Insurance Facility study, and
- the effective date for the exclusion of windstorm and contents coverage in property insurance policies.

The effect of this bill is of a technical, non-substantive nature.

The bill has no fiscal impact and is effective on July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The effect of this bill is of a technical, non-substantive nature. This bill deletes outdated or obsolete language relating to various insurance topics as follows:

**Florida Automobile Joint Underwriting Association Pre-Suit Notice**

Section 627.311(3), F.S., allows the Office of Insurance Regulation to approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance. The Florida Automobile Joint Underwriting Association (FAJUA) is created under the plan. Requirements of the plan are contained in s. 627.311(3), F.S. Section 627.311(3)(k)2., F.S., specifies that before a legal action may be brought against the FAJUA for certain violations by the FAJUA, the Department of Financial Services and the FAJUA must be given 90 days' written notice of the violation giving rise to the lawsuit.[1] Typically, a 60 day pre-suit notice, rather than a 90 day pre-suit notice, is required for actions taken against insurance companies for certain violations.[2] In the 2004 Session, however, the pre-suit notice requirement that applies to the FAJUA was lengthened from 60 days to 90 days to give the FAJUA more time to investigate alleged violations.

By statute, the 90 day pre-suit notice period for the FAJUA expired on October 1, 2007 unless it was reenacted by the Legislature. The statute was not reenacted by the Legislature before the October 1, 2007 deadline. Thus, this bill repeals the 90 day pre-suit notice period as it is obsolete due to the expiration of the October 1, 2007 deadline.

**Report On Private Insurers Issuing and Servicing Wind-Only Policies of Citizens Property Insurance Corporation**

Section 627.351(6)(cc), F.S., requires Citizens Property Insurance Corporation (Citizens) to submit a report to the Legislature on the feasibility of requiring insurance companies providing non-wind property coverage to issue and service Citizens' wind-only property insurance policies which are located only in the high risk account of Citizens. The report was due by February 1, 2007 and was submitted on this

[1] Section 624.155, F.S., specifies the insurer violations which require pre-suit notice to DFS and to the insurer. These violations include: unfair claim settlement practices, illegal dealings in premiums, refusal to insure, favored agent or insurer, illegal dealings for life or disability insurance, life or disability insurance discrimination based on policyholder having the sickle cell trait, return of auto insurance premium upon cancellation of the policy by the policyholder, not settling claims in good faith, claims payments made to policyholders without an accompanying statement relating to the coverage, and failure to settle a claim under one portion of an insurance policy in order to influence settlement under other portions of the policy.
[2] s. 624.155(3)(a), F.S.

date. The bill repeals s. 627.351(6)(cc), F.S., because the deadline date for the report submission has passed.

**Form Filing for Catastrophic Ground Cover Collapse Coverage**

Under current law, every property insurance company must cover "catastrophic ground cover collapse" in the property insurance policy. Property insurance coverage for catastrophic ground cover collapse was made mandatory and added to the law in the 2007 Special Session. Catastrophic ground cover collapse coverage pays the homeowner for property damage caused from the abrupt collapse of the ground cover with a visible ground cover depression resulting in structural damage to the home to the extent that the home is condemned and ordered to be vacated. Structural damage to a home due to settling or cracking of a foundation is not catastrophic ground cover collapse and is not paid for under catastrophic ground cover collapse coverage. Damage of this type, however, may be covered under "sinkhole coverage" which can be purchased for an additional premium. All property insurers must make sinkhole coverage available for homeowners to purchase.

When coverage for catastrophic ground cover collapse was added to the law in 2007 as a mandatory coverage, insurers were required to make a form filing with the Office of Insurance Regulation (OIR) by June 1, 2007 to implement this coverage requirement. This bill repeals s. 627.706(3), F.S., the statutory provision added in 2007 requiring insurers to make the catastrophic ground cover collapse form filing by June 1, 2007 because the filing deadline has passed.

**Report on the Sinkhole Database**

Section 627.7065(5), F.S., requires the Department of Environmental Protection, in consultation with the Department of Financial Services, to submit a report of activities by December 31, 2005 to the Governor, the Chief Financial Officer, and the Legislative presiding officers about the sinkhole database implemented by the Department of Financial Services. The report was submitted on March 10, 2006. The bill repeals s. 627.7065(5), F.S., because the deadline for the report submission has passed.

**Florida Sinkhole Insurance Facility Study**

Section 627.7077, F.S., requires the Florida State University College of Business Department of Risk Management and Insurance to conduct a feasibility and cost-benefit study of a potential Florida Sinkhole Insurance Facility and of other matters related to the affordability and availability of sinkhole insurance. A preliminary report was due to the presiding officers of the Legislature and the Financial Services Commission by February 1, 2005 with a final report due April 1, 2005. The final report was submitted in April 2005 by FSU. The bill repeals s. 627.7077, F.S., because the deadline for the report on the sinkhole study has passed.

**Effective Date for the Exclusion of Windstorm and Contents Coverage In Property Insurance Policies**

Section 627.712, F.S., requires property insurers to provide windstorm coverage in residential property insurance policies but allows a policyholder to exclude windstorm coverage if specified requirements are met. The statute also allows a policyholder to exclude contents coverage if specified requirements are met. The statute was first enacted in the 2007 Special Session. Section 627.712(7), F.S., provides an effective date of June 1, 2007 for the statute but allows the OIR to extend the effective date until October 1, 2007 at the latest with approval of the Financial Services Commission. The bill repeals s. 627.712(7), F.S., which provides the effective date of the statute as the deadlines of June 1, 2007 and October 1, 2007 contained in the statute have passed.

B. SECTION DIRECTORY:

**Section 1**: Amends s. 627.311, F.S., relating to the Florida Automobile Joint Underwriting Association.

**Section 2**: Deletes s. 627.351(6)(cc), F.S., relating to a report by Citizens Property Insurance Corporation.

**Section 3**: Deletes s. 627.706(3), F.S., relating to a property insurance filing for catastrophic ground cover collapse coverage.

**Section 4**: Deletes s. 627.7065(5), F.S., relating to a report of activities relating to the sinkhole database.

**Section 5**: Repeals s. 627.7077, F.S., relating to a Florida Sinkhole Insurance Facility Study.

**Section 6**: Deletes s. 627.712(7), F.S., relating to the effective date of the statute relating to the exclusion of windstorm and contents coverage in property insurance policies.

**Section 7**: Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the repeal of obsolete insurance provisions; amending s. 627.311, F.S.; deleting an obsolete presuit notice requirement for the Florida Automobile Joint Underwriting Association; amending s. 627.351, F.S.; deleting an obsolete Citizens Property Insurance Corporation reporting requirement; amending s. 627.706, F.S.; deleting an obsolete form filing deadline for sinkhole coverage; amending s. 627.7065, F.S.; deleting an obsolete reporting requirement for activities relating to the sinkhole database; repealing s. 627.7077, F.S., relating to a feasibility and cost-benefit study of a Florida Sinkhole Insurance Facility and other matters related to affordability and availability of sinkhole insurance; amending s. 627.712, F.S.; deleting an obsolete effective date for the exclusion of windstorm and contents coverage; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (k) of subsection (3) of section 627.311, Florida Statutes, is amended to read:

627.311 Joint underwriters and joint reinsurers; public records and public meetings exemptions.—

(3) The office may, after consultation with insurers licensed to write automobile insurance in this state, approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and

other motor vehicle insurance, as an alternate to the plan required in s. 627.351(1). All insurers authorized to write automobile insurance in this state shall subscribe to the plan and participate therein. The plan shall be subject to continuous review by the office which may at any time disapprove the entire plan or any part thereof if it determines that conditions have changed since prior approval and that in view of the purposes of the plan changes are warranted. Any disapproval by the office shall be subject to the provisions of chapter 120. The Florida Automobile Joint Underwriting Association is created under the plan. The plan and the association:

(k)~~1.~~ Shall have no liability, and no cause of action of any nature shall arise against any member insurer or its agents or employees, agents or employees of the association, members of the board of governors of the association, the Chief Financial Officer, or the office or its representatives for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to actions for or arising out of breach of any contract or agreement pertaining to insurance, or any willful tort.

~~2. Notwithstanding the requirements of s. 624.155(3)(a), as a condition precedent to bringing an action against the plan under s. 624.155, the department and the plan must have been given 90 days' written notice of the violation. If the department returns a notice for lack of specificity, the 90-day time period shall not begin until a proper notice is filed. This notice must comply with the information requirements of s. 624.155(3)(b). Effective October 1, 2007, this subparagraph~~

~~shall expire unless reenacted by the Legislature prior to that date.~~

Section 2. Paragraphs (dd), (ee), and (ff) of subsection (6) of section 627.351, Florida Statutes, are redesignated as paragraphs (cc), (dd), and (ee), respectively, and present paragraph (cc) of that subsection is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

~~(cc) By February 1, 2007, the corporation shall submit a report to the President of the Senate, the Speaker of the House of Representatives, the minority party leaders of the Senate and the House of Representatives, and the chairs of the standing committees of the Senate and the House of Representatives having jurisdiction over matters relating to property and casualty insurance. In preparing the report, the corporation shall consult with the Office of Insurance Regulation, the Department of Financial Services, and any other party the corporation determines appropriate. The report must include all findings and recommendations on the feasibility of requiring authorized insurers that issue and service personal and commercial residential policies and commercial nonresidential policies that provide coverage for basic property perils except for the peril of wind to issue and service for a fee personal and commercial residential policies and commercial nonresidential policies providing coverage for the peril of wind issued by the corporation. The report must include:~~

~~1. The expense savings to the corporation of issuing and servicing such policies as determined by a cost-benefit~~

~~analysis.~~

~~2. The expenses and liability to authorized insurers associated with issuing and servicing such policies.~~

~~3. The effect on service to policyholders of the corporation relating to issuing and servicing such policies.~~

~~4. The effect on the producing agent of the corporation of issuing and servicing such policies.~~

~~5. Recommendations as to the amount of the fee which should be paid to authorized insurers for issuing and servicing such policies.~~

~~6. The effect that issuing and servicing such policies will have on the corporation's number of policies, total insured value, and probable maximum loss.~~

Section 3. Subsections (4) and (5) of section 627.706, Florida Statutes, are renumbered as subsections (3) and (4), respectively, and present subsection (3) of that section is amended to read:

627.706 Sinkhole insurance; catastrophic ground cover collapse; definitions.—

~~(3) On or before June 1, 2007, every insurer authorized to transact property insurance in this state shall make a proper filing with the office for the purpose of extending the appropriate forms of property insurance to include coverage for catastrophic ground cover collapse or for sinkhole losses. Coverage for catastrophic ground cover collapse may not go into effect until the effective date provided for in the filing approved by the office.~~

Section 4. Subsection (6) of section 627.7065, Florida Statutes, is renumbered as subsection (5), and present subsection (5) of that section is amended to read:

627.7065 Database of information relating to sinkholes; the Department of Financial Services and the Department of Environmental Protection.—

~~(5) The Department of Environmental Protection, in consultation with the Department of Financial Services, shall present a report of activities relating to the sinkhole database, including recommendations regarding the database and similar matters, to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the Chief Financial Officer by December 31, 2005. The report may consider the need for the Legislature to create an entity to study the increase in sinkhole activity in the state and other similar issues relating to sinkhole damage, including recommendations and costs for staffing the entity. The report may include other information, as appropriate.~~

Section 5. Section 627.7077, Florida Statutes, is repealed.

Section 6. Subsection (7) of section 627.712, Florida Statutes, is amended to read:

627.712 Residential windstorm coverage required; availability of exclusions for windstorm or contents.—

~~(7) This section is effective July 1, 2007, but the office may delay application of this section until a date no later than October 1, 2007, upon approval by the Financial Services Commission.~~

Section 7. This act shall take effect July 1, 2010.



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

| | |
|---|---|
| ADOPTED | __ (Y/N) |
| ADOPTED AS AMENDED | __ (Y/N) |
| ADOPTED W/O OBJECTION | __ (Y/N) |
| FAILED TO ADOPT | __ (Y/N) |
| WITHDRAWN | __ (Y/N) |
| OTHER | _____ |

Council/Committee hearing bill: General Government Policy Council

Representative(s) Patterson offered the following:

**Amendment (with title amendment)**

Between lines 20 and 21, insert:

Section 1. Subsection (11) of section 215.5595, Florida Statutes, is amended to read:

215.5595 Insurance Capital Build-Up Incentive Program.—

~~(11) On January 15, 2009, the State Board of Administration shall transfer to Citizens Property Insurance Corporation any funds that have not been committed or reserved for insurers approved to receive such funds under the program, from the funds that were transferred from Citizens Property Insurance Corporation in 2008-2009 for such purposes.~~

Amendment No. 1

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**T I T L E  A M E N D M E N T**

Remove line 3 and insert:

provisions; amending s.215.5595, F.S.; deleting an obsolete transfer of funds from The State Board of Administration to Citizens property Insurance Corporation; amending s.627.311, F.S.; deleting an

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7025 PCB IBFA 10-04 Residential Property Structural Soundness Evaluation Grant Program
**SPONSOR(S):** Insurance, Business & Financial Affairs Policy Committee, Patterson
**TIED BILLS:** **IDEN./SIM. BILLS:**

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| Orig. Comm.: | Insurance, Business & Financial Affairs Policy Committee | 14 Y, 0 N | Callaway | Cooper |
| 1) | General Government Policy Council | | Callaway | Hamby |
| 2) | | | | |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |

## SUMMARY ANALYSIS

The bill repeals s. 627.0629(8), F.S., which establishes a mitigation evaluation grant program for policyholders of Citizens Property Insurance Corporation insured in the high-risk account. The program would allow these policyholders to obtain a grant to pay for a wind mitigation evaluation of their home. The statute conditions the program on appropriation of funds and no appropriation has been given in recent years and due to budget constraints no future appropriation is anticipated.

There is no fiscal impact on state or local government.

The bill is effective on July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 627.0629(8), F.S., requires the Department of Community Affairs to establish a program to provide grants for policyholders of Citizens Property Insurance Corporation (Citizens) insured in the high-risk account to pay for a wind mitigation evaluation of their home. The program is to be administered by Citizens. The statute conditions implementation of the program on an appropriation in the General Appropriations Act (GAA). No appropriation in the GAA was made for the program in fiscal year 2008-2009 or fiscal year 2009-2010 and it is believed no funding has ever been appropriated for the program.[1]

The bill repeals s. 627.0629(8), F.S., which establishes the mitigation evaluation grant program because the statute conditions the program on appropriation of funds and no appropriation has been given in recent years and due to budget constraints no future appropriation is anticipated.

B. SECTION DIRECTORY:

**Section 1**: Deletes s. 627.0629(8), F.S., relating to a mitigation grant program for certain policyholders of Citizens Property Insurance Corporation.

**Section 2:** Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[1] Although it is not believed that an appropriation has ever been given to fund the mitigation program, documentation of funding was only traced back to fiscal year 2008-2009.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Repealing this statute will preclude certain policyholders of Citizens from receiving grants from the state to use to pay for a mitigation inspection. However, no funding has been provided by the State in the last two years for grants and it is believed no funding has been provided since the program's inception.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a residential property structural soundness evaluation grant program; amending s. 627.0629, F.S.; deleting an obsolete Citizens Property Insurance Corporation residential property structural soundness evaluation grant program; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (8) and (9) of section 627.0629, Florida Statutes, are amended to read:

627.0629 Residential property insurance; rate filings.—

~~(8) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL SOUNDNESS.—~~

~~(a) It is the intent of the Legislature to provide a program whereby homeowners may obtain an evaluation of the wind resistance of their homes with respect to preventing damage from hurricanes, together with a recommendation of reasonable steps that may be taken to upgrade their homes to better withstand hurricane force winds.~~

~~(b) To the extent that funds are provided for this purpose in the General Appropriations Act, the Legislature hereby authorizes the establishment of a program to be administered by the Citizens Property Insurance Corporation for homeowners insured in the high-risk account.~~

~~(c) The program shall provide grants to homeowners, for the purpose of providing homeowner applicants with funds to conduct an evaluation of the integrity of their homes with~~

~~respect to withstanding hurricane force winds, recommendations to retrofit the homes to better withstand damage from such winds, and the estimated cost to make the recommended retrofits.~~

~~(d) The Department of Community Affairs shall establish by rule standards to govern the quality of the evaluation, the quality of the recommendations for retrofitting, the eligibility of the persons conducting the evaluation, and the selection of applicants under the program. In establishing the rule, the Department of Community Affairs shall consult with the advisory committee to minimize the possibility of fraud or abuse in the evaluation and retrofitting process, and to ensure that funds spent by homeowners acting on the recommendations achieve positive results.~~

~~(e) The Citizens Property Insurance Corporation shall identify areas of this state with the greatest wind risk to residential properties and recommend annually to the Department of Community Affairs priority target areas for such evaluations and inclusion with the associated residential construction mitigation program.~~

(8)~~(9)~~ A property insurance rate filing that includes any adjustments related to premiums paid to the Florida Hurricane Catastrophe Fund must include a complete calculation of the insurer's catastrophe load, and the information in the filing may not be limited solely to recovery of moneys paid to the fund.

Section 2. This act shall take effect July 1, 2010.

HB 7027

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7027 PCB IBFA 10-05 Prohibited Activities of Citizens Property Insurance Corporation
**SPONSOR(S):** Insurance, Business & Financial Affairs Policy Committee, Patterson
**TIED BILLS:** **IDEN./SIM. BILLS:**

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| Orig. Comm.: | Insurance, Business & Financial Affairs Policy Committee | 14 Y, 0 N | Callaway | Cooper |
| 1) | General Government Policy Council | | Callaway | Hamby |
| 2) | | | | |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |

### SUMMARY ANALYSIS

In 2006, the Legislature created the Insurance Capital Build-Up Incentive Program (Capital Build Up Program or program) within the State Board of Administration (SBA) to provide insurance companies a low-cost source of capital to write additional residential property insurance. The program's goal was to increase the availability of residential property insurance covering the risk of hurricanes and to ease residential property insurance premium increases. To accomplish its goal, the program loaned state funds in the form of surplus notes to new or existing authorized residential property insurers under specified conditions. The insurers, in turn, agreed to write additional residential property insurance in Florida and to contribute new capital to their company.

The Legislature appropriated $250 million non-recurring funds from the General Revenue Fund to fund the program at its inception in 2006. Any unexpended balance reverted back to the General Revenue Fund on June 30, 2007.

As of June 28, 2007, the program issued $247,500,000 in funds to thirteen qualifying insurers. Administrative expenses for the program totaled $2,500,000. Thus, the entire 2006 legislative appropriation for the program was utilized ($247.5 million in loans and $2.5 million in administrative costs).

CS/CS/SB 2860, enacted in 2008, required the Citizens Property Insurance Corporation (Citizens) to transfer $250 million to the General Revenue Fund for transfer to the SBA for additional funding for the Capital Build-Up Program. This funding was in addition to the $250 million appropriated to the program from the General Revenue Fund at the program's inception in 2006. However, the $250 million transfer from Citizens for use in the Capital Build Up Program was vetoed by the Governor.

Another provision in CS/CS/SB 2860 enacted in 2008 (s. 215.55951, F.S.) precluded Citizens from increasing rates or assessments due to the $250 million transfer from Citizens to the Capital Build Up Program. This provision was not vetoed by the Governor.

The bill repeals s. 215.55951, F.S., which precludes Citizens from increasing rates or assessments due to the $250 million transfer of funds to the Capital Build Up Program. The transfer of funds from Citizens to the SBA for use in the Program never happened due to the Governor's veto of the transfer language in CS/CS/SB 2860 and in CS/HB 5057. Thus, the bill repeals obsolete language from the statute.

The bill has no fiscal impact on state or local government.

The bill takes effect July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Insurance Capital Build-Up Incentive Program**

In 2006, the Legislature created the Insurance Capital Build-Up Incentive Program (Capital Build Up Program or program) within the State Board of Administration (SBA) to provide insurance companies a low-cost source of capital to write additional residential property insurance. The program's goal was to increase the availability of residential property insurance covering the risk of hurricanes and to ease residential property insurance premium increases.

To accomplish its goal, the program loaned state funds in the form of surplus notes to new or existing authorized residential property insurers under specified conditions. The insurers, in turn, agreed to write additional residential property insurance in Florida and to contribute new capital to their company. The maximum dollar amount of a surplus note was $25 million. The surplus note was repayable to the state, with a 20 year term, at the 10-year Treasury Bond interest rate (with interest only payments the first three years). The Legislature appropriated $250 million non-recurring funds from the General Revenue Fund to fund the program at its inception in 2006. Any unexpended balance reverted back to the General Revenue Fund on June 30, 2007.

As of June 28, 2007, the program issued $247,500,000 in funds to thirteen qualifying insurers. Administrative expenses for the program totaled $2,500,000. Thus, the entire 2006 legislative appropriation for the program was utilized ($247.5 million in loans, and $2.5 million in administrative costs).[1]

**2008 Appropriation from Citizens Property Insurance Corporation for Capital Build-Up Program**

CS/CS/SB 2860, enacted in 2008, required the Citizens Property Insurance Corporation (Citizens) to transfer $250 million to the General Revenue Fund for transfer to the State Board of Administration (SBA) for additional funding for the Capital Build-Up Program. This funding was in addition to the $250 million appropriated to the program from the General Revenue Fund at the program's inception in 2006. The Citizens' funds were to be transferred from the personal lines account and the commercial lines account of Citizens on December 15, 2008, unless one or more hurricanes resulted in total losses in those accounts in excess of $750 million. CS/CS/SB 2860 limited the costs of administration by the SBA to 1 percent of the amounts appropriated ($2.5 million). The unexpended balance in the program

[1] Information obtained from the Final Report of the Insurance Capital Build-Up Incentive Program available at http://www.sbafla.com/fsb/LinkClick.aspx?fileticket=4pFJtyJjK2U%3d&tabid=413&mid=1236 (last viewed October 30, 2009).

reverted to the General Revenue Fund on June 30, 2009. The bill also required the SBA to refund to Citizens uncommitted funds, interest and principal payments for surplus notes that were funded by appropriations from Citizens.

The $250 million transfer from Citizens for use in the Capital Build Up Program was vetoed by the Governor.[2] In his veto message Governor Crist stated: "[w]hile I believe the program is well intended and has had the net effect of removing nearly 200,000 policies from the Citizens Property Insurance Corporation and has kept an additional estimated 480,000 policies out of Citizens, the funding source is inappropriate. The original funding for the program came from the General Revenue Fund during the 05/06 fiscal year; however, the additional funding for the program provided in this legislation comes from policyholders' premiums paid to Citizens, which is used to pay claims in the event of a catastrophic hurricane. ...Taking $250 million away from Citizens' ability to pay claims will substantially increase the likelihood of assessments for Floridians across the state."[3]

Another provision in CS/CS/SB 2860 enacted in 2008 (s. 215.55951, F.S.) precluded Citizens from increasing rates or assessments due to the $250 million transfer from Citizens to the Capital Build Up Program. This provision was not vetoed by the Governor.

**Effect of Bill**

The bill repeals s. 215.55951, F.S., which precludes Citizens from increasing rates or assessments due to the $250 million transfer of funds to the Capital Build Up Program. The transfer of funds from Citizens to the SBA for use in the Program never happened due to the Governor's veto of the transfer language in CS/CS/SB 2860 and in CS/HB 5057. Thus, the bill repeals obsolete language from the statute.

B. SECTION DIRECTORY:

**Section 1**: Repeals s. 215.55951, F.S., relating to the ability of Citizens to increase rates or assessments due to a transfer of funds from Citizens to the Capital Build Up Program.

**Section 2**: Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[2] Section 16 of CS/CS/SB 2860 which required the $250 million transfer from Citizens to the General Revenue Fund for use in the Capital Build Up Program was vetoed on May 28, 2008. CS/HB 5057 also required the $250 million transfer and this bill was vetoed on June 10, 2008. (http://www.flgov.com/2008_legislative_actions)

[3] http://www.flgov.com/leg_actions/2008/2008_sb2860.pdf

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to prohibited activities of Citizens Property Insurance Corporation; repealing s. 215.55951, F.S., relating to an obsolete prohibition against Citizens Property Insurance Corporation using certain amendments or transfers of funds for rate or assessment increase purposes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 215.55951, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2010.